

Bungled justice can't fix itself

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Comment by Bret Christian

Eight years ago a reporter named Colleen Egan decided to take up the case of Andrew Mallard, then an extremely unpopular cause in the western suburbs.

Last week Mr Mallard enjoyed final exoneration in the court of public opinion.

The Police Commissioner, the Director of Public Prosecutions and the Attorney General apologised to him for his wrongful conviction for the murder of Mosman Park jeweller Pamela Lawrence.

Not long before, our state's new Chief Justice, Wayne Martin QC, took a public swipe at the "advocacy roles being adopted by sections of the media".

Some media outlets assumed the role of "prosecutor, defender, judge and jury," Mr Martin said.

The trend was "disturbing and something which has the potential to greatly reduce public confidence in our justice system".

The stark, cold fact is that had Ms Egan not taken up Andrew Mallard's case, he would still be in jail.

That would be much more disturbing than some imagined attack on "the system".

Jim McGinty, the Attorney General, says that the exoneration of Mr Mallard shows that the legal system fixes itself by correcting its errors.

It shows the opposite. It was only outside influences, starting with Ms Egan and ending in the High Court in Canberra, that fixed it.

The High Court pointed to devastating errors made on the prosecution side - all of which helped point to Mr Mallard's "guilt".

Chief Justice Martin made his attack during the height of local and national publicity about the Phillip Walsham case.

Three young men are serving life sentences in Hakea Prison for murdering Mr Walsham by throwing him off a footbridge.

Mr Martin says that half a dozen cases over 45 years do not point to systemic problems.

But these are just the bad ones we know about - the disasters that have finally been fixed, in the legal sense.

They have not fixed the lives that have been cruelly destroyed.

Prominent criminal lawyer Tom Percy QC estimates there are between 40 and 80 Andrew Mallards rotting in WA jails.

Some shocking mistakes have put them there.

What is disturbing is the exposure of flaws in the investigation and prosecution of the wrong people - in the cases we know about.

Are these same standards letting real criminals roam free?

Mr McGinty says there is no need for an independent Criminal Cases Review Commission like the UK's, which has had 199 convictions overturned in the British court of appeal since it was formed in 1997.

The CCRC has its own lawyers and investigators, completely separate from the rest of the police and judicial system.

Where a case has merit, they take it to the appeal court.

A win means that the wrongly-convicted person is automatically entitled to compensation, unless he or she is

responsible for their situation.

Then an independent panel assesses how much, away from the grace and favour of the Attorney General - the only system that exists here, in the rare cases where compo is paid.

Britain's CCRC does away with the need for journalists and lawyers working thousands of hours for free to take up doubtful convictions.

This will keep happening here, to Mr Martin's ire, as long as there is no alternative.

Mr McGinty says WA does not need a CCRC.

That function was performed by the Director of Public Prosecutions, he said.

This is the same body accused of obstruction in the Mallard and other cases, with a stubborn refusal to admit error.

Opposition justice spokeswoman Sue Walker has a different view to Mr McGinty.

The Member for Nedlands was once a DPP lawyer.

She said the CCRC was good idea, in principle. She wants to look at the detail.

She has also been pushing for a Judicial Commission to oversee judges, as exists in NSW.

An experienced criminal lawyer told the POST that WA does not have more or less problems with policing or prosecution than any similar jurisdiction.

The problem here, he said, lies with those judges who tolerate intolerable behaviour by people appearing before them.

A Judicial Commission not only gives the public an avenue to monitor and make complaints about judges, it also keeps track of sentencing statistics so that sentences can be passed in a consistent framework.

More work and, yes, more money is needed to make us a more civilised society.

Names like Button, Beamish, Mickelberg, Christie and Mallard - that seemingly took for ever to clear - should not have come to mean a running sore in our justice system.