

What if it was a judge - and no jury?

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We will never know, but the outcome of the second Phillip Walsham murder trial last year might have taken a different turn without a jury.

Before their jury trial last year, the three charged men applied

to the court to have their case heard by a judge sitting without a jury.

They said that press publicity about the death of Mr Walsham had been so prejudicial to them that they could not get a fair trial.

In court they produced cuttings and angry letters from The West Australian and Sunday Times, and television news footage.

This included a Channel 7 news bulletin showing arresting police popping champagne with Phillip Walsham's parents on the night the three men were charged with wilful murder.

The accused men said the tape and cuttings showed that the public would be so prejudiced by the pre-trial publicity that a jury drawn from that pool could not reach a fair verdict.

But Justice Eric Heenan turned down their application.

He said that even without the publicity, the act of two men kicking Mr Walsham would be raised at the murder trial.

This would be so prejudicial that the jury would require a very strong direction not to make an inappropriate link with the death of Mr Walsham.

He also said a lot of time had passed since the publicity, and it would have faded from jurors' memories.

Justice Heenan presided over the 10-week trial in front of a jury, beginning in March last year.

His summing up stretches over 170 pages of transcript. The jury took three days to reach a Sunday morning verdict.

Justice Heenan sentenced the men to life imprisonment with a 10-year minimum.

Despite the controversial nature of the case, press and television coverage of the second 2006 trial was non-existent except for the first and last days and reports by the POST and the ABC's Australian Story program.

Many days of hearings were held in the absence of the jury, as the state prosecutor successfully argued against certain evidence being put before the jury.

This included the testimony of a psychologist specialising in the unreliability of eyewitness testimony, especially where the witness has been hypnotised.