

Book launch, *Presumed Guilty*: When cops get it wrong and courts seal the deal. Review and Q & A with author Bret Christian.

Review and launch by Thomas Percy QC at the Centre for Ethics, Christ Church Grammar School, Claremont, Western Australia, October 18, 2013. Extract:

"A book like this comes along very rarely.

Not only does it convey a poignant and important message, it is a rivetingly readable experience.

This book is a masterly, incisive and compelling work of literature.

Remarkably, it reads like a novel. I suspect that anyone reading it without any knowledge of the events in question would have to pinch themselves to belief that it's all true, that these events actually happened." - Thomas Percy.

Mr Percy's address followed a question and answer session, where television journalist Alison Fan interviewed author Bret Christian. The full text of Mr Percy's comments is also reproduced.

Alison Fan: You have a busy day job running a newspaper - what made you decide to write a book?

Christian: Journalists love telling stories, especially compelling inside stories that have never seen daylight. A cluster of people on my home turf were wrongfully convicted, sent to jail for crimes they did not commit. Research has meant a lot of digging, work that took me to some pretty dark places. I was intrigued by the why. Mostly, guilty people get convicted, but why do the wrong people get sent to jail in some cases? I searched but could not find the answers, so I wrote about them myself.

2. What is *Presumed Guilty* about?

It's a book in two parts, firstly about what goes wrong; secondly why it goes wrong, with some suggestions about how to fix the problems.

3. I was surprised to read that in addition to referring to well-known cases like that of Darryl Beamish and Lindy Chamberlain, *Presumed Guilty* in effect solved two forgotten crimes that happened close to where we are sitting now. Can you tell me how that came about?

It was a by-product of research into other crimes. I was always intrigued by how police had initially come to suspect Darryl Beamish, a deaf man wrongfully convicted of murder and sentenced to hang: there had never been a satisfactory explanation. The evidence led me to firmly believe that Peggy Belleville, a woman attacked in her home within easy walking distance from where we are now, held the key to unravelling this mystery. In fact I am firmly convinced that yet another man, a deaf friend of Darryl Beamish's, was wrongfully convicted of this crime, an injustice that remains on the books to this day.

The other incident I stumbled across was the fatal shooting of Ronald James McGuinness in Broadway, Nedlands. Last year after a book launch like this one, I cadged a lift with Graeme Dalton, a former Daily News photographer who shared some startling information. He drove me to the site where McGuinness, who was being chased by detectives, leaped a fence and was shot in the back, a good shot considering that one detective told the coroner that his gun went off accidentally as the tops of two pickets broke off as he was trying to scale the same fence. The coroner accepted this version. Graeme told me how he had been sent to photograph the scene on the day of the shooting and surprised two detectives busily snapping the tops off two pickets.

4. Many of the case histories you go through are quite gruesome, quite confronting. How did you cope



Alison Fan interviews Bret Christian. 350 people attended

with that?

I didn't so much lose sleep over the gruesome bits, although some of victims' ordeals are haunting. My main emotion was anger - anger at the way innocent people had been treated. In fact I abandoned my first attempt to write this book until I composed a better perspective - reading it back it sounded far too angry.

5. You interviewed eleven wrongfully people. In your experience of dealing with such people, what effect does a wrongful conviction have on the victim and on society?

It shatters the lives of them and their families - wrongfully convicted persons never fully recover their reputations, even if compensation is paid. I still meet people who believe Lindy Chamberlain guilty despite all the commissions of inquiry, inquests and complete exoneration.

6. Are we talking just about Western Australia? Or is it a wider problem?

No, it is worldwide, or where the British common law system is inherited, including the US. The game-changer in proving this has been DNA - roughly 300 prisoners each in USA and Britain have been convicted under the jury system and later found not guilty.

7. Surely these wrongful convictions have been analysed. Are you not just going over old ground?

The DNA exonerations are playing catch-up - sweeping up the broken glass after the vase has been smashed. Now that we know the extent of the problem, obviously the best way is prevention - to do that we need to find out the why. I hope this has opened a window into the why.

8. In your view why does justice go wrong?

Every wrongful conviction begins with a bad call by the arresting officer. Why does he or she make that call? The roots go back to our cave man origins - our dependence on our intuition.

9. You explode the myth of copper's instinct. What is coppers' instinct and what role does it play in wrongful convictions?

Copper's instinct is the term for the a very strongly held but false belief that experienced police officers are very good at divining whether or not a suspect is guilty or not. Science now tells us that there is no factual basis for that belief.

Many people think they can read facial expressions or body language. Experiments have proved that without other evidence, even the most experienced detectives, prosecutors, lawyers and judges have a hit rate in this so-called skill of 50-50 - the same as chance.

10. So you are saying that none of us are much good at detecting truth-tellers and liars?

That's right. The roots of this belief are fascinating, and go back to our convict days and beyond. Much of the myth-making was done by crime fiction writers and creators of movie and TV crime shows, right back to Charles Dickens. Many police came to believe the favourable publicity.

11. Surely once new evidence comes along, there is a re-thinking of the entire case at all levels?

That's when the initial error gets compounded. Other human factors can kick in to protect the initial belief. Facts that don't fit are discarded, those that do can become exaggerated. The human mind works to quarantine the initial wrong decision.

When that individual belief becomes an entrenched corporate belief, the wrongfully accused person is really in trouble.

12. Mateship is a great Australian quality, but you question its role when an investigation goes wrong. Can you expand?

There is only one stronger tribe in our society than its police force, and that is the armed forces. Both face action and danger and are tied together with bands of mateship - a great Australian trait. But it is the distortions of mateship that lead to the protection of wrong-doing, or turning a blind eye, staying silent when they should speak up, like to cops who snapped off the pickets to protect their mates.

Blowing the whistle is easier said than done - to speak up can be career-ending.

13. Are you anti-cop?

No, I'm a great supporter. They face tragedy and grief so that generally we don't. They do an incredibly difficult job to keep us safe and they are rightly proud of the job they do. But their training should embrace the relatively new research about the unreliability and dangers of intuition. .

14. But the court system is a filter to detect injustice and to free the innocent. Why does it sometimes fail?

Society is primed to believe the police. By the time a charged person reaches court, sits in the dock and faces the judge or jury, most people think that person is guilty, and that includes jurors. We believe the police because they are the police. The accused man wouldn't be in the dock unless the police had something on him, or that is the general belief.

15. But jurors are instructed by the judge to impartially weigh up the evidence?

Jurors are no good at detecting liars either. If a verdict comes down to deciding which witness to believe, based on the way they present in court, the chances of a wrong verdict are immense. That includes letting

guilty people walk free.

It's almost amusing that the British are debating whether to force Muslim women to remove the face veil. Why should seeing the witness's face make any difference? Science tells us that we can't detect liars by looking at a person's face. The verdict must be based on the evidence, not on how someone looks.

16. Once a person is put behind bars, how difficult is it for them to prove their innocence?

Extremely difficult. They are legally no longer presumed innocent; they have to find evidence that overturns the original verdict - very difficult to do from behind bars. In most cases all friends have deserted, there is no money to fight and no way to start untangling the mess.

We have no formal system here to re-investigate cases - Britain does, its Criminal cases Review Commission has had more than 300 wrongful convictions overturned. In most Australian states it is up to the grace and favour of politicians as to whether a case will be re-opened. I believe this law has the potential to create great injustice, as in the very recent decision by a prisoner named Scott Austic.

17. Your comments on jury trials have excited a lot of interest since the book was published. You talk about Trial by Google. What is that?

It's can be a short cut to jail for some jurors - a simple Google search can turn them into criminals. Jurors are instructed not to make their own inquiries, such as about the criminal record of the accused person. One study showed that 12% of jurors cannot resist making illegal Google searches.

18. Do we put too much confidence in juries to reach the right decision?

Yes. Jurors are no better at detecting liars or mistaken witnesses than police officers or the rest of us. Juries are primed to prejudice - the architecture of the courtroom, the guarding and isolation of the accused person in the dock. They look guilty without speaking a word. And behind the closed doors of the jury room, all sorts of problems have arisen. And there is no doubt that real criminals sometimes walk free because of mistakes made by juries. There is now proof that it's a very imperfect system.

19. Can you give us some real life examples of what goes wrong with juries?

The internet has given us some real insight into juries in recent years. One juror used facebook to enlist her friends to help her make a decision. Another tweeted that he could not wait to convict a paedophile - before hearing one word of evidence.

That juror is in jail.

This year in London, Vicki Pryce's jury showed by questions they asked the judge that they had absolutely no understanding of the very clear instructions the judge gave them. How many juries are in that position but remain silent?

Jurors in a case in the US flipped a coin to decide their verdict. Jurors in the UK were caught using a Ouija board to ask the deceased person who murdered him.

20. What new factors do you believe will tip the balance and lead to fewer trials by jury?

They are trial by Google, which is impossible to police, and some recent and not so recent findings of science about group decision-making. Science now tells us that the consensus system as used in the jury room is the worst possible way to reach a just decision. By the way, the same findings apply to other consensus type decision-making such as government cabinet rooms and company boardrooms.

Five juror studies throughout the world where jurors were interviewed have shown an appalling lack of understanding of basic legal principles, such as presumption of innocence and beyond reasonable doubt.

They have also shown something else that is alarming - bullies in the jury room are more common than most would think. Strong personalities dominate, even when wrong.

21. Your book suggests an alternative to the jury system. Can you tell us about that?

It already exists, and is used daily in Australia. A panel of usually three judges sit on the bench on appeal courts and conduct hearings very different to jury trials, without the combative, destructive features of the adversarial system.

22. How do you believe this will be implemented?

The wheels of reform grind very slowly. But I believe that more and more applications will be made for judge-alone trials based on the lynch mob crazies who inhabit the internet. At the moment is it very difficult to win an application for a non-jury trial. But this will gradually change. It will be forced to by the internet. Lloyd Rayney was successful in dispensing with a jury, but not until he proved in court that 24,000 people had made online comments indicating they believed him guilty. It was likely that some jurors would have been drawn partly from this pool. Eventually jury trials will all but disappear as they have in coroners' inquests and defamation trials.

23. I found the most chilling part of your book the very detailed confession to his crimes by Eric Edgar Cooke, who late at night prowled the suburbs all around here, and killed and maimed people on the roads and in their beds. What was the purpose of including all that?

Years ago I first met a very scary man named Dr Thomas Mueller, an Austrian criminal psychologist, and

saw him again last year. He has studied the most wicked serial offenders at very close range. What he had to say about serial offenders for the first time made, to me, sense of senseless serial killings. Much greater minds than mine says that we should now add to the old legal definition of insanity, and Eric Cooke seems to fit a new definition of serial offenders. Back then a jury found that he was sane, and he was hanged.

24. So you believe that there should be a new legal category for insanity? Why is that? How would it make society safer?

Firstly we could focus on prevention, and identify people at risk at an early age and help prevent serial killings. There are more around than most people imagine. Secondly, by identifying a new category of insanity, it removes such offenders from the parole system. It may be that the Melbourne woman Jill Meagher, murdered on her way home, would still be alive if that new definition had been in place. It might well apply to the Greenough murderer who controversially went before the Parole Board this week.



Alison Fan, Bret Christian and Tom Percy QC.

Full text of the book launch speech by Thomas Percy QC:

Bret Christian Book REVIEW
"PRESUMED GUILTY"

19 October 2013

"A book like this comes along very rarely. My colleague Joff Davies once observed that books are a bit like food: those that are really good for you usually aren't very interesting. This book is a significant exception to that rule.

Not only does it convey a poignant and important message, it is a rivetingly readable experience.

It's nearly 15 years since Estelle Blackburn wrote her epic book "Broken Lives". It won every award in its category. It captivated the State and won her the Order of Australia. It set two men free. Most of us liked to think that it would be the end of the line for books like this. This sort of thing was a debacle of the past, wasn't it? Sadly, it wasn't.

In his book Bret deals comprehensively with the disgraceful litany of cases that have occurred in W.A. since then.

Colleen Egan's book ("Murderer No More") documented how Andrew Mallard's case was a huge blot on the copybook of WA Justice, a jury and two Courts of Appeal getting the entire case horribly wrong.

And then there is the appalling saga of Micklebergs. I hardly need to elaborate on that disaster.

Not to mention cases like Rory Christie, Clark Easterday, Lloyd Rayney. The list becomes extensive and embarrassing.

As well as the unresolved miscarriages like Austic and Arthur Greer and who knows how many others?

Bret's book also poses the question as to who looks after the low profile cases? Such as the wrongful convictions for mid-level drug offences, sexual assaults and the like, which never attract any writers, journalists or politicians to their cause.

It's a troubling thought that if (as anecdotal evidence suggests) only 1% to 2% of prisoners were wrongly convicted there are currently 40- 80 people wrongly in prison in WA alone.

A 98% success rate is fine, provided you aren't one of the 80 wrongly convicted persons who will go to bed in a WA prison tonight.

So what do we take from a book like "Presumed Guilty"? What needs to happen now?

Sadly, as the whole saga of Lloyd Rayney's case shows, these problems are far from over.

The jury system, as Bret observes is suspect. Everyone should have the right to elect trial by judge alone. (Let a court decide this, not a politician). This is an urgent area of reform.

And while we are at it, how about:

A right to an appeal on fresh evidence without the Attorney General's consent.

A Criminal Cases review Commission, like the UK

A National Court of Criminal Appeal; not just a right to seek special leave to the High Court.

The DPP should be scaled down, cases briefed out. Counsel work should not be done in-house. Let prosecutions be done by fair-minded, independent barristers who owe the police and the system nothing. Costs in Criminal cases for acquitted persons.

Why should anyone lose their house or superannuation successfully defending themselves?

A real avenue to seek compensation (in addition to legal costs) from the State. Not just a right to go cap in hand to the Government ex gratia payments. Give the Courts the power to do this.

A need for a justice unit to be a compulsory part of the curriculum in every school in the State.

There are many other issues arising, if not directly, then inferentially from "Presumed Guilty".

This book is a masterly and incisive and compelling work of literature.

Remarkably, it reads like a novel. I suspect that anyone reading it without any knowledge of the events in question would have to pinch themselves to belief that it's all true, that these events actually happened.

I can only start to imagine how much work it took, and literally shudder to think. I commend and take my hat off to Bret for the monumental task he undertook, and so successfully completed.

It will stand in its own right for years to come, not just as a magnum opus of Western Australian true crime, but on the National and possibly International stage as well.

It is a book that has a place in the personal library of every law student and lawyer and judge in WA. And that of every police officer.

It belongs on the curriculum at every law school and every secondary school in this State. It should be compulsory reading on the curriculum at the Police Academy in every Australian State.

In due course I hope (without any disrespect to Bret) that this book will become a curio. In a sense a bit like Fremantle Prison.

I hope that the book will become a place where one day West Australians will take their kids and grandkids and say "This really happened. This is what we as a society did to our own people".

My other fervent hope is that no-one will ever have to write a book like this again. But that, I suspect, is a forlorn hope.

In the meantime I can only implore you all to read the book, learn from its lessons, and never ever let the next generation forget that these appalling and disgraceful things did actually occur.

It gives me great pleasure to congratulate Bret again, to declare the book officially launched and wish it the success it so richly deserves.

Presumed Guilty: When cops get it wrong and courts seal the deal; by Bret Christian. Published by Hardie Grant Books (Australia), Richmond, Victoria.