

Turning their backs on justice

By: Paul Murray
March 14, 2012
The West Australian

Source: <http://au.news.yahoo.com/thewest/opinion/post/-/blog/paulmurray/post/2569/comment/1>

The International Justice Conference in Perth was as noteworthy for those who didn't attend as it was for its stellar cast of exonerated convicts and celebrated legal and forensic experts.

Not one senior WA police officer or prosecutor saw the need to be at any session over the three days from Friday to Sunday. No one from the Director of Public Prosecutions or the Attorney-General's office was a delegate.

The legal fraternity, apart from the Criminal Lawyers' Association, basically turned its back on the conference.

The Law Society, which runs its own conferences on a commercial basis - but rarely with speakers of this calibre - went as far as refusing to allow the organisers, JusticeWA, to advertise in its magazine, Brief.

It was inevitable that the media focus would fall on the case studies of injustice: Rubin "Hurricane" Carter and his partner John Artis, Lindy Chamberlain, the very recently released Gordon Wood and New Zealand's David Bain, exonerated of the executions of his family.

Are those who ply their wares in our courts so knowledgeable about the potential and the dangers of DNA technology that they didn't want to hear from Professor Barry Scheck? After all, he's the man who started the international Innocence Project movement on the back of DNA's potential to right the wrongs of imperfect justice systems.

And was no one in the WA justice system interested in Europe's leading criminal profiler, psychologist Thomas Muller, who untangled the twisted mind of Josef Fritzl and worked with some of the worst sexual deviants?

Was there nothing to learn from Britain's leading forensic pathologist Richard Shepherd who advised the inquiries into the death of Princess Diana, Northern Ireland's Bloody Sunday, the 9/11 outrages and the Bali bombings?

Why did the WA Police Union not want to hear from Canadian blood spatter expert Joe Slemko, a serving officer who refused to take an order from his police chief that he could not work as an expert witness for the defence in the interests of truly open justice?

Const. Slemko's scathing analysis of police failings that led to injustices - tunnel vision, noble cause corruption, agency loyalty, lack of peer review and inadequate training - was a highlight of the conference.

On all sides of the WA justice system, the approach to a conference that most cities in the world would have embraced, was simply disgraceful.

And so very Perth in its self-conscious, blinkered ignorance.

That didn't help the sense of jaundice that became overpowering as delegates were assailed with details of appalling miscarriages of justice that may only be a small percentage of all cases heard, but are so damaging in their consequences. After three days of examining the entrails of our system, I was left with the indelible impression that the major sickness is its adversarial nature.

The stakes are just too high in terms of reputation - for that you can often read ego - and money. The system is judged on the basis of winning, not on its ability to deliver justice.

It also causes police to cut corners, prosecutors to hide evidence and both parties to muddy the waters with junk science to get convictions.

One conference panel discussion, headed by shadow attorney-general John Quigley, examined the case for a criminal case investigations commission in WA to look into faulty convictions.

Mr Quigley has worked on all sides of the legal street as a police union lawyer, the injustice campaigner who pulled apart Andrew Mallard's wrongful conviction and now as a legislator.

But even he showed how myopic people inside the system can get.

Summing up part of the panel discussion, Mr Quigley said: "The first thing in any criminal case review would be to ensure there has been full disclosure."

This puts horse behind the cart. Surely we should be ensuring there has been full disclosure before a case begins.

And this would also be the correct time to examine the relevance and value of any scientific evidence, before the adversarial processes kick in.

Some form of inquisitorial system - as happens in parts of Europe - where both sides contribute to the cause of justice, rather than just winning, might create a fairer system in our higher courts where defendants face the most punitive judgments.

That said, the outlook for genuine reform is bleak. Setting up a body to right systemic wrongs is second best.

The most dangerous place in the law is between a defence lawyer and a billing sheet. The ability for the system's best practitioners to generate huge fees means nothing will change at the front end where the real problems lie.

The end result is that injustice flourishes. And restorative justice just becomes too expensive.