

MEDIA MURDERS THE ISSUE

The latest “debate”, for want of a better word, regarding mandatory life imprisonment for murder is a good example of the inadequacies of the way the media reports legal issues and, in particular, law and order matters.

It began with the NT News article on Friday 7 October. The page two article was headlined: *Does life mean life for NT Killers?* The article stated that in the Territory life meant life but that the Government was looking at what life means. (Who knows if this meant the Monty Python movie, existential writings or s 164 of the Code?) In that context the article then went on to talk about three “lifers”, Albury, Crabbe and Leach, including a precis of Leach’s dastardly double killing and rape of two teenage cousins at Berry Springs. It then adverted to a further article on their fate and the issue generally for the next day. Yours truly was approached by the author of the story regarding this matter and I was happy to oblige with CLANT’s views on the inadequacies of what mandatory life imprisonment meant to our criminal justice system. I outlined various aspects which are unsatisfactory.

In Saturday’s NT News there was a news story and “feature” on the topic. The front page headline stated: *Killers may walk free* with photographs of Leach, Crabbe and Albury, described as “NT’s Hannibal”, plus the remains of the Inland Motel at Ayers Rock and Crabbe’s truck. Over onto page two and the thrust of the story was that the three aforementioned notorious inmates could be released after 20 years as the NT Government had conceded that “Cabinet had decided lifers could be released by exercising the prerogative of mercy”. It then went on to quote myself criticising mandatory life imprisonment. Further, a “special report” was to be found heading the News Mag section at page 15. Once again photographs of Albury, this time described as “Australia’s Hannibal Lector” as well as Leach and Crabbe and the Demolition Derby. The NT News dedicated three pages to this story. More than two of those

pages consisted of running through the grizzly details of Albury, Leach and Crabbe’s killings. Much gore and eight bodies later there was an explanation on what the mental elements of murder were and some quotes from various people including myself again being critical of mandatory life imprisonment.

The “feature” article was a classic illustration of the disservice the media does to our criminal justice system. Under the guise of explaining an important question in the criminal justice system it merely peddled the grizzly, sadistic and sensationalistic aspects of three 20 year old homicides. The newspaper was no doubt playing to the market. Its editors would consider that such gore sells papers, even when it’s old gore. People, for reasons best known to people, like reading about these things. Such a fact is confirmed when you look at the ever growing section in every book shop on crime and, in particular, “true crime”. Likewise our video stores and TV shows are full of this area of “human endeavour”.

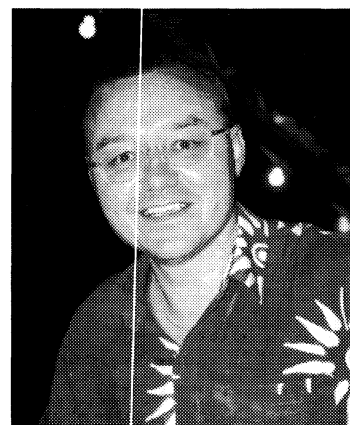
Of course any prospect of proper debate is lost in the gore.

The next day the “Sunday Terror” came in its wake to provide a story reflecting a street poll. The headline was *Murderers Should Stay in Gaol: Poll*. I note the front page also titillated with a feature article: *The Woman Who Hunted Serial Killers*. Don’t we just love it!

Who knows what the poll people were asked. Suffice to say that five out of the six were of the view that life should mean life. It is interesting to note in the article that the preceding paragraphs before quoting the good citizens’ opinions strongly suggested their views may have been coloured by the facts of the murders committed by Crabbe, Leach and Albury. I quote:

“Chief Minister Denis Burke announced on Friday that Cabinet had decided lifers could be released by exercising the “prerogative of mercy”.”

“That means that murderers, Douglas Crabbe, Martin Leach and Andy Albury,



Johnny Lawrence, CLANT President

will be eligible to seek release in 3 years.”

The Fourth Estate’s raising and outlining of the issue had set the scene.

Enter stage left, tub thumping, chest beating, the political opportunists. I stress plural. Leaders of both parties came out declaring just how tough they were. It was time for the old “hanging is too good for them!” and “throw away the key!” etc blah, blah, blah.

The NT News on Monday continued its coverage with a page two article headed: *CLP Won’t Free Killers: Burke*. Both the Government and the Opposition were unequivocal: forget any applications for mercy after 20 years. As far as both political parties are concerned, life means life.

Likewise the Attorney General gave the familiar drum beat on Fred McCue’s ABC talk back show. As yours truly was in Gove and so unable to hear that show, it was left to Richard Coates to attempt to inject some reason and balance into the question.

All in all a very sorry but very typical example of the difficulties caused by the inadequacies of the media’s reporting of criminal justice issues. What could have, and should have been an informative series of articles on an important issue in our criminal justice system became merely four days of re-visiting three old horror cases, the end result being an unbalanced context in which this issue now exists.

The fact that the NT crime of murder as defined carries mandatory life imprisonment and, at least according to the latest political brayings; “life means life”, poses a serious blight on our criminal justice system. Sadly it is not without

similar company in the sentencing arena. It's, of course, consistent with this jurisdiction having more people jailed per head of population than any other State or Territory in Australia.

This law severely compromises the integrity of our criminal justice system. It causes unfairness and costly procedural protraction.

"Life means life" means that the effective mandatory sentence for a murder conviction is "the next best thing" to capital punishment. One's advice on this to your client charged with murder, and his or her family, is accordingly rather chilling. This leads in reality to significant lengthening of murder charge proceedings: in practice longer committal hearings, trials and virtually 100% appeals against conviction. Concomitant with that is very few guilty pleas to murder.

Who pleads guilty to murder in the Territory? Either genuinely and seriously contrite murderers or, did I hear you say, idiots? There is simply nothing to be gained in pleading guilty. As it happens the vast majority of criminal charges in our system are resolved by way of guilty pleas both in the Magistrates and the Supreme Court. Our sentencing principles, through economic pragmatism directly encourage the same; refer s 5(1)(j) of the Sentencing Act and the Unreported Court of Criminal Appeal Decision of *Kelly v R* dated 30 June 2000. None of that applies to our law as regards murder. Of course the supporters of its retention claim that all murders are serious and that it cannot be mitigated. Sounds good but denies reality.

What's more the definition of murder in the Northern Territory is significantly broader as regards a defendant's intent than in other States. In the Territory murder can be committed without the intention to kill. Unusually one need only have the intention to cause grievous harm. We also have felony murder which is causing death while committing a crime which carries a maximum penalty of 14 years and more: s 162(1) and (2)(a). Also one can murder in the Northern Territory by attempting to escape police custody through actions which are likely to endanger human life, it being immaterial that the defendant didn't intend to cause death and did not know that death was likely to result: s 162(1)(b), (2)(c) and (5).

Therein lies a potentially wide variety of circumstances and levels of wickedry employed by a murderer. That cannot be reflected in the sentences. They all get the same: life. And according to the Cabinet life equals life for all.

I personally know of some lifers whose crimes were far far less culpable than the ones already mentioned in this article which are so often reported and re-visited by the media. Yet those people have got the same sentence. Some of them have done less than similar killings which were either resolved by way of pleading guilty to manslaughter or jury verdicts which returned the same.

One of the arguments against capital punishment was the realistic acceptance that the system, being the system, was always going to include mistakes. Consistent with our traditional attitude to criminal justice the situation whereby a wrong person gets hanged or sentenced to life due to the unavoidable presence of human error is highly objectionable. In the Territory people have been, they are presently, and will undoubtedly in the future, be wrongly convicted of murder and sentenced to life imprisonment. Dare I mention that case again, but thus jurisdiction is well known as regards it, *R v Chamberlain*.

Some commentators believe that juries are reluctant to convict on a murder charge because they are aware of the finality of the sentence.

These are the features, some of them standing alone, certainly combined, that make the retention of the present law unacceptable. It costs us a fortune and it can lead to serious unfairness. Comity of sentence is a fundamental principle in sentencing. Life equalling life for all convicted murderers whatever their circumstances flies in its face.



I understand that most prosecutors and defence lawyers are of this view. CLANT is presently preparing a submission for the Government to suggest alternatives.

Bearing in mind the brouhaha generated recently on this issue one can't help but wonder why.

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CLANT is pleased to announce that in conjunction with the Criminal Law Section of the Law Institute of Victoria it will host the 8th Biennial Criminal Law Conference in Bali between 22 — 30 June 2001. Contact: Convention Catalysts via telephone: 8981 1875, fax: 8941 1639.

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