

Ratline, he follows the escape and subsequent death in Rome of Otto Wächter, lawyer and Governor of the district of Krakow and Galicia during the Second World War (answerable to Hans Frank, whose son was one of the subjects of *East West Street*) and responsible for creating the Krakow Ghetto and implementing the Final Solution in the areas for which he was responsible.

This is in part a love-story derived from letters between Wächter and his wife Charlotte (read by Stephen Fry and Laura Linney), but also the story of how Wächter escaped Poland after the war, living in the mountains for several years before escaping to Rome, where he was protected by the Catholic Church and, it would seem, accepted as an agent by the Americans (on the basis that Nazis, as enemies of their enemy (Russia), were their friends) and possibly also the Russians. He died in Rome, in potentially suspicious circumstances, before he could be spirited away on the ratline to South America.

There are conversations between Sands and Wächter's son Horst (in a draughty, old castle in Austria), which are similar to the discussions with Franks' son in *East West Street*, save that Horst, in the face of all evidence, refuses to accept that his father had any responsibility for what occurred.

Sands clearly likes Horst, but does not shirk exposing him to the full horrors of his father's conduct. Sands continues to unearth evidence throughout the podcast, but Horst remains unshaken.

The detail of the ratline and how some of the Nazis escaped justice was something of which I was aware, but the format of a podcast over ten twenty-minute episodes allowed Sands to develop why and how it operated by reference to the detail of one particular case, whilst exposing the ordinary, human side and occasional tenderness of the individuals involved, even where they had been guilty of the most heinous of crimes against humanity and genocide. The involvement in protecting the Nazis and the ratline of the Catholic church and the Americans was shocking. I was captivated. Sands presents the evidence and the results of his inquiries in an apparently objective way, but his views are clear and, in the best traditions of the bar, he made it impossible to come to any different conclusions.

Returning to capital punishment, the podcast *Capital* provides a wonderfully entertaining series, the pity of which is that it is difficult to see scope for a second series.

A government has been elected on an election promise to hold a referendum to reintroduce capital punishment; and when it is held, it results in a 51 per cent majority (described by the Minister of Capital Punishment as 'a strong popular mandate') in favour. Four civil servants are then tasked with implementing the vote, at least one of whom is implacably opposed.

An effective disguise in popular culture

suggests an interesting character both with and without the mask underneath: thus Batman is the caped crusader and the troubled loner and Zorro the dashing vigilante and the nobleman seeking vengeance. There has always been a sizeable portion of the population that is in favour of capital punishment and *Capital* is a hilarious, but disturbing, look at what might occur if a referendum were held on the issue. Underneath, it is a withering satire on Brexit and the chaos it has unleashed.

The similarities are not limited to the set-up of the referendum, but extend to the inability of the politicians and the civil servants to deliver a sensible response, seeking refuge in modern meaningless management-speak at every turn.

For each half-hour episode, the cast of four main characters improvised around a 'beat sheet' for about ten hours, but the editing is tight and it continues to hit the target without dropping the pace.

There is a team-building exercise where the four each get to nominate what would be their last meal if they were about to be executed, which includes discussion as to whether there is a vegan option.

Then, in debating what method is to be adopted, hanging is characterised as a hard capital punishment with lethal injection being soft. A suggestion that 'national treasure David Beckham kicks their head in' is not adopted and the guillotine is decided to be 'too French' when what is wanted is 'a British punishment for the British people'.

There is a search for an executioner, which ends with the team's pizza delivery guy Mario accepting the offer; and a search for a sufficiently unsympathetic character to be the first victim or 'service user', which includes a suggestion that 'horse botherers, bankers and fake vicars' should be executed and a rush to the airport to prevent the deportation of an ideal candidate.

An intended meaningless soundbite from the incompetent Minister that 'It'll all be over by Christmas' is taken as a policy decision on when the first execution is to occur. The end of the series, which takes place on Christmas day, is arresting, disturbing and thought-provoking.



PODCAST

Season 3 of the *Serial* Podcast

'One courthouse told week by week'

The justice centre in Cleveland Ohio takes up a whole city block downtown. It's a cluster of concrete towers built in the 1970s. I could hedge here, but I'm just going to say it. The buildings are hideous. But practical. ... Roughly speaking the building functions like most hierarchies. Vertically. In this case from the bowels up. The main court tower is 26 stories high. So the elevator really runs the place.

So begins Sarah Koenig in the third and latest season of the *Serial* podcast. And in those opening minutes, as Koenig describes suspects being escorted from the underground carpark by 'weary cops', the 'courteous stenographers' dragging their 'squat wheelie bags' into the elevators and the defence attorneys 'riding up and down ... muttering to each other, griping about judges, who have their own judge elevator, so they're not overhearing', you can't help but think that Koenig's lyrical sketch could be of any Australian criminal courthouse. It could be the Downing Centre; it could be the Parramatta court complex; it could be the Supreme Court in Queens Square.

For those of you not (yet) addicted, *Serial* is an investigative journalism podcast hosted by Sarah Koenig, a producer and journalist of *This American Life*. When *Serial* first launched in 2014, the podcast became an overnight success. The first season of *Serial* won a Peabody award in April 2015 for its innovative telling of a long-form non-fiction story. The first two seasons of *Serial* have been downloaded more than 340 million times, establishing an ongoing world record.

In the first season of *Serial*, Koenig narrated an investigation into the 2000 conviction of Adnan Syed for the murder of his girlfriend, Hae Min Lee, in Baltimore. (The show led to the grant of a retrial for Syed, which is still pending.) The second season of *Serial* documented the story of Bowe Bergdahl, a U.S. soldier who was captured by the Taliban.

The third season takes a different approach. As Koenig says, Syed's case does not tell us much about the criminal justice system. It was an unusual case, not least because most cases do not go to trial, and because it concerned murder, the most serious of criminal offences. Koenig states 'I don't think that we can understand how

the criminal justice system works by interrogating one extraordinary case. Ordinary cases are where we need to look.' In the third season, *Serial* does just that. Koenig and her co-producer, Emmanuel Dzotsi, spent a full year observing cases in the one courthouse in Cleveland. They tell the stories of the minor misdemeanours, the felonies, the cases of pub brawls, weed possessions, assaults, shootings and armed robberies that they heard about over that year.

The producers of *Serial* chose Cleveland because they were allowed to record everywhere – in 'courtrooms, back hallways, judges' chambers, the prosecutors' office'. As a result, the commentary is illustrated by the voices of judges, prosecutors, defence attorneys, police officers, witnesses, victims and accused persons, as spoken in evidence, in court, and in interviews about their experience of justice.

The success of *Serial* is a comfort to those who fear the demise of journalism – especially for those who fear that investigative journalism is being replaced by superficial events coverage and that thorough reporting is being supplanted by 140 character tweets. It is long – each episode is about an hour long. Each episode is rich in detail, nuanced and intelligent.

Serial is also compelling. Ira Glass (host and producer of *This American Life*) has explained that the intent of *Serial* was to give viewers 'the same experience you get from a great HBO or Netflix series, where you get caught up with the characters and the thing unfolds week after week, but with a true story, and no pictures. Like *House of Cards*, but you can enjoy it while you're driving.' As with Seasons 1 and 2, Season 3 of *Serial* certainly achieves this aim.

Like the Netflix series *The Wire*, Season 3 of *Serial* explores broader social issues through the lens of its individual stories. And as with *The Wire*, one of the key issues examined through those individual stories is race, and in particular, the experience of African Americans as victims in and of the American criminal justice system.

In the first episode, Koenig says 'this place is primarily black and white.' The clerks and security guards are most mostly black. Managers, deputies and attorneys are mostly white. Almost all of the county court judges are white. Yet most of the defendants and crime victims are black. Koenig continues:

'In the cocoon of the elevator, everyone's polite to each other, pretending that nothing is weird about this. But if the elevators were calibrated to detect a power imbalance in the load, like a socially conscious clothes dryer, they'd be perpetually on the fritz.'

Some issues covered by Season 3 will shock Australian lawyers. *Serial* describes elected judges who become 'controversially

entertaining TV judges' and headlines like 'Woman Convicted in Murder Conspiracy Calls Judge Racist, Gets Life Sentence' and 'Judge Compares Man Acquitted of Murder Charge to Las Vegas Shooter at Sentencing' (emphasis on the word 'acquitted'). The audio of a county court judge (unconstitutionally) ordering an offender to not have any more children out of wedlock as a condition of probation is particularly alarming (Episode 2 'You've got some Gauls').



The Cleveland Justice Centre



Judge Gaul, who has been elected to sit since 1992: 'You're on probation ..., and if you have more kids out of wedlock that you can't afford to pay for, I'm going to send you right back to the institution.'

Judge Compares Man Acquitted of Murder Charge to Las Vegas Shooter at Sentencing' (emphasis on the word 'acquitted').

However, other issues explored in Season 3 will resonate with Australian lawyers, particularly those practising in crime. In the first episode (*A bar fight walks into the Justice Centre*), Koenig examines a 'small case' about a young woman ('Anna') who is sexually harassed in a bar and ends up accidentally punching a police officer in the ensuing brawl. Koenig describes the case as an 'example of what's considered functional justice in Cuyahoga County', a case that is considered to be an example of 'the system working'.

And the system does 'work' in that case – the plea that is eventually negotiated (a minor misdemeanour of disorderly conduct) seems fitting, and the fine ultimately imposed is minimal. But Koenig also catalogues the other consequences that Anna has endured: her distress in the back of the police car after her arrest; her four nights in the squalid county jail; the interest that must be paid on her \$5000 bail bond money; the onerous conditions of her court supervised release (bail); and the court costs. As Koenig points out: 'What they're not saying, maybe because they're not seeing it, is the extent of Anna's punishment. Which when you take a minute to catalogue the consequences, was not small. It did not fit the crime.'

The institutional pressures on defendants to plead guilty is also a theme which will be of interest to Australian criminal lawyers. *Serial* depicts an overloaded criminal justice system that relies on pleas of guilty to function; a system in which judges who have not read the brief of evidence pressure defendants to plead; in which under-resourced prosecutors overcharge to induce pleas and in which the public funding of defence attorneys is structured to reward those who can convince their clients not to defend charges, even when their client is innocent. As one Cleveland judge explains to Koenig, 'Plea bargaining isn't part of the criminal justice system, it is the criminal justice system. Pleas are cheap. They lead to more convictions and to more incarceration.' (Episode 5, *Pleas Baby Pleas.*)

But as *Serial* vividly demonstrates, the system's dependence on pleas does not lead to justice. About Anna's case, Koenig states 'Everyone around here, prosecutors, defense attorneys, judges, even defendants, has internalized this idea that a misdemeanor is of little consequence. A lawyer like Russ [Anna's attorney] sometimes has to remind himself how mangled a principle that is. If the prosecution can't prove its case, they should drop it, not simply shrink it until it looks harmless enough to swallow.'

Serial's warning about the risks of a criminal justice system which is structured to apply excessive pressure to plead is timely. Like the Cleveland County Court, our courts are plagued by delay. The encouragement of early pleas is one way of reducing those delays, as is recognised by the Early Appropriate Guilty Pleas (EAGP) legislation. But the dangers of wrongful pleas as illustrated in *Serial* are real. Those risks must be borne in mind by legislators, judges, prosecutors and defence lawyers, to ensure that an incentive to plead guilty does not cause the innocent to forego their right to trial.

Serial, Season 3 is available for free on Apple Podcasts and Google Podcasts. It is also available on the *Serial* webpage: <https://serialpodcast.org/season-three/>