



# THE CONTRIBUTION OF “CORRUPTION” TO MISCARRIAGE OF JUSTICE CASES

Corruption Prevention Network Forum

Sydney 6 September 2012

# OBJECTIVES



- To define “corruption” (incl. process corruption)
- To outline how “corruption” can lead to MoJ cases
- To examine the causes of MoJ cases
- To suggest ways of preventing and dealing with corruption and MoJ cases

# CLOSE YOUR EYES AND IMAGINE!

- Please close your eyes and imagine where you were on New Year's Eve in 1999, when the clock ticked over to a brand new millennium ....



# CONSIDER!



- That was nearly 13 years ago
- Did you know that the US Innocence Project research shows that an exoneree (someone conclusively shown to be innocent through the use of DNA) spends an average of 13 years in prison!!!
- If you were innocent, that surely would seem like an “Eternity”!

# BACKGROUND

- I saw the case of Andrew Mallard in WA dramatically unravel first-hand. Opened my eyes to the very real possibility of MoJ cases.



# What is a MoJ?

- Simply put, “A failure to achieve justice”
- A matter involving a “**wrongful conviction**”
- Nobles and Schiff (2000) in *Understanding Miscarriages of Justice* stated:

“That the people who have been convicted of offences did not in fact commit those offences, or that their convictions were flawed because some part of the process that produced those convictions did not operate as it should ..[W]e will call the first a concern with **truth** and the latter a concern with **due process.**” (emphasis added)
- My paper more concerned with cases of factual innocence and truth

# MoJ Cases in Australia - Examples

- Chamberlain (NT)
- Splatt (SA)
- Button and Beamish (WA)
- Mallard (WA)
- Farah Jama (VIC)



See others at Networked Knowledge website –  
<http://netk.net.au>

# DEFINITIONS - CORRUPTION

- Problematic with a host of definitions and interpretations – sinister overtones
- UN didn't even define it in the *United Nations Convention Against Corruption* (UNCAC) – first legally binding international anti-corruption instrument
- *AS8001 Fraud and Corruption Control* definition:  
“A dishonest activity in which a director, executive, manager, employee or contractor of an entity acts contrary to the interests of the entity and abuses his/her position of trust in order to achieve some personal gain or advantage for him or herself or for another person or entity.”
- Have chosen a broad definition for the purposes of this paper

# DEFINITIONS – CORRUPTION WITHIN POLICING

- Justice Wood (who presided over the Commission of Inquiry into the NSW Police) defined “corruption” as including “the mala fides exercise of police powers” (1997). He also stated that relevant conduct is considered to be corrupt whether motivated by an expectation of financial or personal benefit or not, and whether successful or not.
- Also included the concept of “process corruption” or “noble corruption” (also sometimes referred to as the “Dirty Harry Problem” (Klockars 1980)).



# “PROCESS CORRUPTION”

- Wood referred to as one of the most “obvious, pervasive and challenging forms of police corruption” (1997). His Honour stated (1997):

“This is the kind of corruption whereby unnecessary physical force is applied, police powers are abused, evidence is fabricated or tampered with, or confessions are obtained by improper means. It is often directed at those members of the community who are least likely or least able to complain, and is justified by police on the basis of procuring the conviction of persons suspected of criminal or anti-social conduct, or in order to exercise control over sections of the community.”

# “PROCESS CORRUPTION”

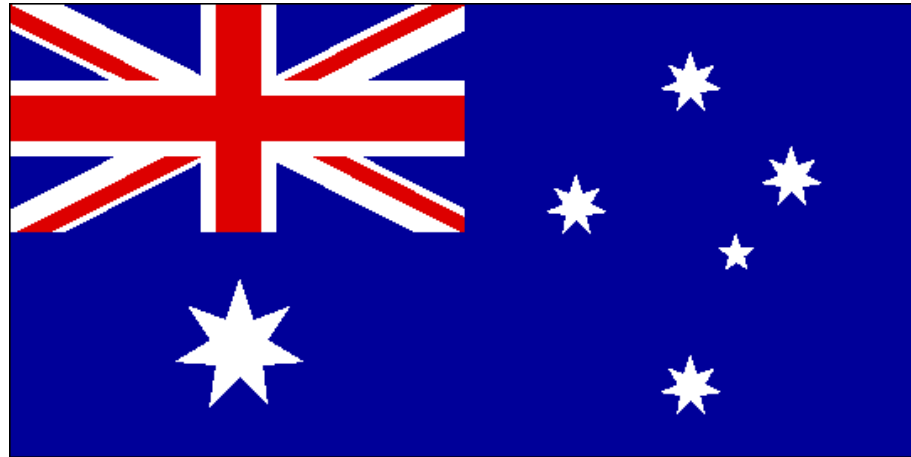
- In a 1999 speech after the Inquiry, Wood J. stated:

“[T]he reality is that as often as process corruption has been the result of “honourable” motives, it has also been engendered by black motives referable to opportunistic theft, the elimination of rivals at the behest of a protected criminal, self advancement in securing promotion, thrill seeking, and simple laziness or unwillingness to do the hard work required for an ethical investigation.”

# CAUSES OF MoJ CASES - AUSTRALIA

Leading study is that of Langdon and Wilson (2005) “When Justice Fails”. General areas included:

- Police
- Evidence
- Secondary Sources
- Mass Media
- Trial Processes
- Misunderstanding of Cultural Factors



# CAUSES OF MoJ IN AUSTRALIA

Numerous factors listed by Langdon and Wilson including:

- Allegations of over-zealous/unprofessional police investigation;
- Allegations of incompetent police investigation;
- Allegations of criminal police behaviour;
- Possible witness perjury;
- Unreliable police informer;
- Allegations of prosecutorial misconduct



# CAUSES OF MoJ IN AUSTRALIA

- Langdon and Wilson found that “over-zealous” police conduct was recognised as a major contributing factor and was akin to a “systemic dynamic”. It was found responsible or partly responsible in **50%** of cases. They stated:

“Examples of such conduct include police deliberately distorting a witness’s statement, coercing a confession from a vulnerable suspect, and ignoring exculpatory evidence. The issues relating to over-zealous police investigations are similar to those that Wood ... described as ‘process corruption’. Police often appear to engage in such conduct because they strongly believe the suspect is guilty and consequently fail to follow other lines of inquiry.”
- “Prosecution misconduct” was identified in **15%** of cases.

# CAUSES OF MoJ - US

The US IP lists the most common causes of wrongful convictions as:

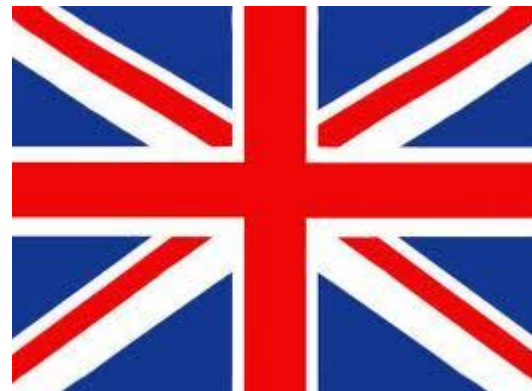
- Eyewitness misidentification;
- Unvalidated or improper forensic science;
- False confessions/admissions;
- **Government misconduct;**
- Informants or snitches; and
- Bad Lawyering.



# CAUSES OF MoJ - UK

Richard Foster CBE, the Chair of the UK CCRC in the 2010/11 Annual Report:

- “The causes of miscarriage of justice are many and varied and include inefficient or misguided investigations, fabricated or suppressed evidence, misconceived expert evidence and confessions obtained through duress ... The most common basis of referrals remains the non-disclosure of material evidence at the original trial.”



# CAUSES OF MoJ - CANADA



Bruce MacFarlane QC:

“Two critical factors have arisen in all jurisdictions: First, the existence of “predisposing circumstances” that foster wrongful convictions to occur in the first place, including so called “noble cause corruption”, and ends-based police and prosecutorial culture that masks misconduct as legitimate on the basis that the guilty must be brought successfully to justice. Second, ... “tunnel vision” which leads justice system participants to focus prematurely on a single suspect.”

(See also Department of Justice Canada report 2004)

# CASE STUDIES – MALLARD



Andrew Mallard spent 12 years in gaol. Major Inquiry by the CCC (2008). 8 findings in total of misconduct against two Assistant Commissioners of WA Police and a senior DPP Prosecutor relating to:

- Request to the forensic scientist to amend his report to remove certain material (relating to salt water testing);
- Alterations to witness statements without any reference to their earlier recollections;
- False entries in the Running Sheets relating to witness statements;
- Failure to disclose original witness statements, original forensic report and details of unsuccessful attempts to locate an appropriate weapon;
- The conduct of the trial in relation to evidence re the wrench and the failure to disclose evidence to the defence.

# CASE STUDIES – ARTHUR THOMAS

- *All The Commissioner's Men* (2012) by Chris Birt
- Murder of Jeanette and Harvey Crewe in 1970 in a NZ farmhouse
- Arthur Allan Thomas convicted of murder and pardoned in 1979 (following David Yallop's book *Beyond Reasonable Doubt* (1978))
- Thomas Royal Commission (1980) found police responsible for planting and fabrication of evidence, including a critical .22 cartridge case at the crime scene
- Relevant police still not called to account despite requests from victims' daughter and wife of Arthur Thomas
- One police officer still holds a certificate of merit for his "diligence and zeal" in solving the Crewe homicides.

# CASE STUDIES – GRAHAM STAFFORD

- The damning nature of the maggot, which was later found to not match maggots from the body of the victim, discovered in Stafford's car boot. Conviction quashed in 2009. QLD CMC found nothing wrong with the original police investigation.
- Recommended reading: *Who Killed Leanne Holland?* (Crowley & Wilson 2010). Graham spent 15 years in gaol.



# STRATEGIES – MUST ENSURE PUBLIC CONFIDENCE

- Innocence Projects
- Criminal Cases Review Commission or similar
- Better appeal and review mechanisms – see report of SA LRC (2012)
- Ongoing training and education for police, lawyers, judges etc.
- Specialised MoJ courses for law students
- A national coalition – MoJAR?



# STRATEGIES (CONT'D)

- International best practice in homicide investigation (UK?)
- Clear disclosure policies in all jurisdictions
- Law reform e.g.. Sub judice contempt
- Media involvement
- Ensure a clear role for Anti-Corruption Authorities
- **Accountability**



# FORENSIC SCIENCE LINKED TO CORRUPTION



- “Mystic Infallibility” of DNA – see Farah Jama case. Issue of conviction on DNA evidence alone. (See Victorian Vincent report (2010))
- Kirby J. UTAS address 2010:

“Whilst deliberate error may be a relatively minor problem in Australia, there is always a risk that contamination of evidence will be procured through improper or fraudulent intervention ... In a sense, the very power and weight of DNA evidence produces a temptation to manipulate it.”
- Must ensure that police in this country would not stoop to planting incriminating forensic evidence, particularly DNA

# FORENSIC SCIENCE LINKED TO CORRUPTION (CONT'D)

- Incriminating DNA evidence significantly increases convictions; juries voted guilty **23 times** more frequently in homicide cases and **33 times** more frequently in sexual assault cases when DNA evidence was introduced by the prosecution (Goodman-Delahunty & Hewson 2010)
- Damning nature of DNA in Jama, the lone maggot in Stafford's case, the planted .22 cartridge in Thomas and the allegedly forged fingerprint in Mickelberg.



# FINAL THOUGHT



You may personally think that the concept of a MoJ is an esoteric and unlikely issue.

You will know only too well, the emotional, psychological and financial devastation, if you, or one of your family or friends, stands wrongly accused, or worse, convicted, of a serious crime.

Would you like one of your loved ones to spend many long years languishing in prison while you and others fight to prove their innocence?

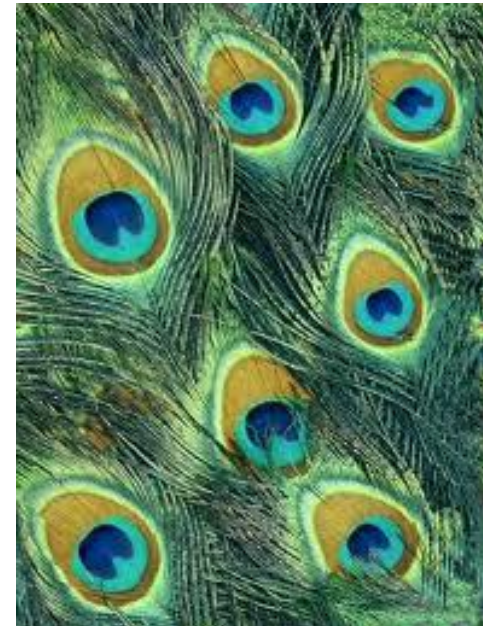
# CONCLUSION

- We must all work together, across disciplines, with a sense of urgency, to address the MoJ issue.
- It is only by working collaboratively and with the support of the community that we can prevent the corruption in our criminal justice system that may lead to MoJ cases or the subsequent corruption that may mean that such cases are not properly exposed and addressed.

THANK YOU

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Formal paper is available from BEtter Consulting and Networked Knowledge websites.