

Haunted by Azaria

The name Azaria has become synonymous with a mystery that continues to fascinate many Australians. When baby Azaria Chamberlain went missing from Uluru on the 17 August 1980, the myths of Australia's harsh outback interior and its wild Northern Territory were cemented in minds of many.

Just as the disappearance of British backpacker Peter Falconio looked to overshadow the Chamberlain case in the public's mind, more twists and turns developed. In July Melbourne pensioner Frank Cole claimed that he shot a dingo which had Azaria's lifeless body in its jaws. The media exploded with news and speculation about this latest 'development' in Australia's greatest mystery. Mr Cole's 'revelations' made national and international headlines.

The case of Azaria Chamberlain's disappearance has been the criminal law case which refuses to lie down. Just when the Territory's legal profession believes that it may have finally moved beyond the controversy there is another development that overshadows any of the modern, progressive or impressive developments that may be happening.

Outside the Northern Territory, rarely is there a mention of the innovative and diverse approaches that are trialed in response to the unique legal challenges we face, but the slightest sniff of 'news' about the Chamberlain case and the media frenzy starts again.

The Chamberlain case is used as an example for everything in the legal system from the usefulness of forensic evidence, to the scrutiny of female defendants and the implications of wrongful imprisonment.

The continuing developments, bizarre twists and human elements of this case, mean that it still captures the imagination of many Australians who live outside the Territory. It is one of the most engaging stereotypes still plagues the development of a modern image of the Territory and outback Australia.

In this latest round of

developments, Mr Cole claims that he was camping near Uluru with four other men when he shot a dingo, having mistaken it for a rabbit. Allegedly, the campers then found the baby's body in the dingo's mouth. They removed the baby's clothes and washed the blood and dirt away from the body. The group were going to bury the baby there, but ran off when someone approached.

Mr Cole said he believed one of his companions had eventually buried the body in Melbourne, possibly in the backyard of his inner-city home.

According to Mr Cole, the group made a pact not to go to authorities because they were afraid of getting into trouble for illegally shooting in a national park. He has only chosen to speak up now because two of his companions have already passed away, another has dementia and he is in failing health.

On the back of this new evidence that a dingo may in fact have taken Azaria Chamberlain, as her parents Lindy and Michael have continued to claim, there were also rumours of a white girl about the same age as Azaria living with an Aboriginal community in the western desert outside Alice Springs.

Channel Nine's program 'A Current Affair' (ACA) has devoured these new revelations and faithfully reported every detail to its viewers, even going so far as to have Michael Chamberlain, Azaria's father, question Frank Cole (while he was attached to a polygraph).

Despite his willingness to appear on ACA, Mr Cole originally refused to be interviewed by Northern Territory Police, allegedly on advice from his solicitor, Chris Murphy.

This again fuelled controversy in the media, with some media outlets and commentators claiming interference from Channel Nine. Perhaps this can also be interpreted as 'sour-grapes' by those who didn't manage to secure the scoop.

Eventually, Mr Cole did agree to be interviewed by Territory Police. The police have since prepared a report which has been handed to the Coroner, however the police have denied claims that the investigation has been reopened.

We may hope that the mystery surrounding the disappearance of Azaria Chamberlain will one day be laid to rest, but it is unlikely that the speculation, conjecture and the nation's obsession with the case will ever end.

LCA calls for preservation of right to silence

The Law Council of Australia (LCA) has strongly defended the right to silence following the suggestion by Australian Federal Police (AFP) Commissioner Mick Keelty that juries should be invited to draw adverse inferences about suspects who refused to respond to the questioning of law enforcement authorities.

Law Council President Bob Gotterson QC said that the right to silence principles are as fundamental as the presumption of innocence.

According to Mr Gotterson the

right to silence in Australia includes the right to refuse to answer questions and the right not to have adverse inferences drawn by courts or juries about that

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What is the correct Balance?

The Council of the Law Society has determined that a review of the *Balance* magazine be conducted and the input of members sought.

Balance has had an important role for members in providing information and a wide range of articles on various subjects. The contributions from organisations like the NT Bar Association, NT Women Lawyers Association, Criminal Lawyers Association NT and individuals such as Jason Schoolmeester, Mark Hunter and Justice Trevor Riley (with his Advocacy columns now consolidated in "The Little Red Book of Advocacy") have been particularly useful for members.

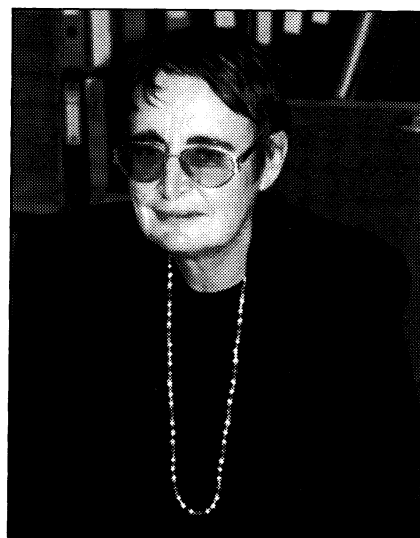
There have been some problems with the publication with *Balance* over the last few months – in particular with producing magazines monthly, as scheduled. The production of *Balance* is a lengthy process. Our Public Relations Officer, Zoe Malone, often spends a considerable amount of time chasing up columns from busy contributors (I often require as much chasing up as anyone else) and even getting suitable copy can be a chore. Then comes the editing process, and printing takes several days. This invariably lengthens the time taken for *Balance* to reach

members and subscribers.

Zoe combines her role as the Editor of *Balance* with many other duties, including arranging events like Law Week and other social functions and dealing with the many media issues that arise, some requiring immediate attention. Zoe is also responsible for *The Practitioner*, the Society's weekly email newsletter.

Many members have welcomed the arrival of *The Practitioner* which enables information to be provided in a timely fashion (sometimes on the same day as it becomes available) in convenient abbreviated electronic format. In fact it has to some extent taken over the information providing role of *Balance* and steals the content that would normally be in the magazine. I myself have sometimes written material for *Balance* which was out of date by the time it was published.

A suggestion has been that *Balance* be produced bi-monthly. It has also been suggested that whilst the focus on photos of events and social matters should remain, there should also be a stronger focus on more "academic" articles of interest to the profession.



Barbara Bradshaw, Chief Executive Officer, Law Society NT

Balance definitely has an important role – what should it be?

Comments should be received by September 2004 so a report can be completed for the incoming Council's consideration.

You will find a survey about *Balance* enclosed in this edition and I encourage all readers to fill this in and return it to the Law Society and provide any additional comments to assist the Society in meeting the needs and expectations of the legal profession.

Alternatively, readers may make their comments to myself at bbradshaw@lawsocnt.asn.au or to Zoe Malone at publicrelations@lawsocnt.asn.au or by telephoning the Law Society on 08 8981-5104.①

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refusal.

'It is not for an accused person to have to prove their innocence,' he said.

"The prosecution must prove their guilt and an accused person who declines to answer an interrogator's questions should not be penalised for doing so."

In 2000, the New South Wales Law Reform Commission concluded that it would be

inappropriate to qualify the right to silence in the way suggested by the AFP Commissioner.

The Commission concluded that modification of the law along the lines suggested by Mr Keelty would undermine fundamental principles concerning the relationship between the State and the liberty of citizens.

Mr Gotterson said it would be unfortunate if Mr Keelty's comments led rank-and-file law

enforcement officers to believe that the Australian criminal justice system was unbalanced in favour of accused persons.

"For law enforcement authorities there remains no substitute for good investigative work leading to the identification of persuasive admissible evidence of guilt," he said.