Reasons to Set Aside and Acquit

– Henry Vincent Keogh –

Brief Background

On late Friday afternoon, 18 March 1994, after a stressful day in her new role with the Law Society of South Australia, Anna-Jane Cheney (29) met with her fiancé, Henry Keogh (38) at the Norwood Hotel. He was a former District Manager for the State Bank of South Australia who had, just six weeks prior, been coaxed to accept a career change with Baker Young, a well-known firm of stockbrokers.

After having enjoyed a number of Chardonnays they arrived home (Anna-Jane's home, shared with Henry) at around 7:00PM. She phoned her sister-in-law to arrange to take their dogs for a walk. They met up for that purpose at 7:30 PM. Anna-Jane returned home with her dog around 8:15PM. Henry had arranged to call in and visit his mother, which he did at 8:30PM. Anna-Jane had begun running a bath as he left.

Henry returned home at 9:30PM to find his fiancée slumped in the bath. He immediately put his arms under hers and dragged her out onto the bathroom floor where his immediate attempts to resuscitate her failed. St John Ambulance received his distressed call at 9:33PM. Ambulance officers attended promptly and also failed to resuscitate.

Anna-Jane's face was swollen and vomit was clogging her airway. It was also in her hair, on the floor and on her tracksuit which Henry had used to wipe her face.

Police arrived within minutes and by 11:00PM some twenty people (police, ambulance officers, and family members) had arrived – some viewing the body, and some also interviewing or comforting a distraught and weeping fiancé.

That night, an entry was made in the Holden Hill Police Station Journal which read, in part:

> "No suspicious circs, appears drank bottle of wine during evg at hotel, gone home, sat in bath, fallen asleep, drowned. No signs of struggle etc on body at all."

But Dr Colin Manock, Chief Forensic Pathologist for South Australia had different thoughts. He learned, from Anna-Jane's father, of at least one insurance policy on Anna-Jane's life where Henry Keogh was the beneficiary. He immediately seized on a 100-year-old murder story in the UK (his place of birth) known as the 'Brides in the Bath' murders.

And well before his shoddy, inept examination and autopsy report had finished, he had fabricated a murder scenario (as he had done in numerous other cases) that would mislead police, committal proceedings, two criminal trials and a Court of Criminal Appeal. And once again, he would need to both fabricate and conceal evidence to achieve his ends – in this case, that Henry Keogh had wilfully drowned his fiancée in her bath to claim a total of $1.15million insurance on her life.

In the **Treatment** of the script, *A Stacked Deck – The Fate of Henry Keogh*, it is the first brief excerpt from the script which accurately explains why Henry Keogh had taken out five life insurance policies on his fiancée and also two life policies on himself between February and April 1993, just twelve months before her death.

Compelling Reasons

The following matters are compelling reasons for the Full Court of the Supreme Court of South Australia (Court of Criminal Appeal) to set aside the murder conviction of Henry Keogh and enter a verdict of acquittal.

- Seven days after the death of Anna-Jane Cheney, the Coroner for South Australia issued a written order to cremate her body. The cremation subsequently took place unlawfully on Wednesday, 30 March 1994 in the face of a Major Crime investigation having been declared and commenced just three days before the order was issued.

- In 1982, Justice Wilson of the High Court of Australia (in another case) made it clear that "cremation of the body meant that there couldn't be any further examination. This underscores concerns about using forensic evidence in trials where the body has been prematurely cremated, thus precluding the defence from properly examining the prosecution evidence."

- At the time of cremation Dr Colin Manock had breached the following forensic examination procedures:

  (a) Police were not in attendance at the autopsy on Sunday 20 March 1994.

  (b) Organ weights were not recorded.

  (c) Insufficient tissue samples had been retained to thoroughly determine cause of death.

  (d) No toxicology report had been called for on the stomach contents.

  (e) No expert examination of the brain was conducted.

  (f) No expert examination of the heart was conducted.

  (g) No tryptase test was ordered.

  1. **Note** that breaches (c), (d), (e), (f) and (g) above ruled out the possibilities of Angioedema and Anaphylaxis, two significant causes of sudden unexpected deaths. These **allergy** related conditions are easily identifiable by facial swelling and a restricted airway. And in the instance of Anaphylactic attack the airway is often clogged with gastric content. Anna-Jane's face was swollen and her airway restricted and clogged. Vomit was also in her hair and on her clothes.

     Also, the **antihistamines** (allergy medication) found in her bathroom cabinet clearly indicated that she had a predisposition to allergic reactions.

     And Angioedema and Anaphylactic attacks are often caused in adult women by hormonal changes of the menstrual cycle, heat, insect stings, some foods, pollen, emotional stress, alcohol and surprisingly... "exposure to water". **Yet no tests were carried out** in spite of the presence of antihistamines and the following concerns which were also known to Dr Manock:

     - Anna-Jane's **alcohol** reading was 0.08 forty-two (42) hours after death. It would have been higher at the time she stepped into a warm bath.

- She had just returned from taking her dog for a long brisk walk. This would have caused obvious **over heating**, and if nothing else could easily have exposed her to allergic triggers such as freshly-cut vegetation and **pollen**.

- Her **high-stress** role within the Law Society of South Australia had placed her in a position on the day of her death where she needed to confront an extremely agitated, well-known lawyer suspected of fraudulent conduct.

- An unexplained reddish mark on her outer left thigh was consistent with an injection mark or an **insect sting** which could have occurred when she was walking her dog. It was never referred to in Dr Manock's autopsy report.

- The stomach contents were never examined to determine if the deceased had become allergic to something she had eaten at the local Hotel on the late afternoon of her death. **Some foods**, spicy foods in particular, can trigger Angioedema which can then cause an anaphylactic reaction.

- Now add to the above potent cocktail the exposing of her entire body to **water**. The risk of Angioedema would have been high enough to send her into a first-time Anaphylactic attack. All the elements were in play, even without the possibility of an insect sting.

2. A third and likely possibility disregarded by the examiner was SUDEP – Sudden Unexpected Death in Epilepsy. Many of these deaths occur as a result of first-time epileptic attacks. Professor Anthony Ansford, a noted Professor of Pathology who gave evidence at the Keogh trials said:

> "Probably the most likely [event] in that sort of scenario would be an epileptic attack. Epileptic attacks are associated, in my experience, and in the experience of others, **with drowning in bath tubs**."

   At the time of trial Professor Ansford was totally unaware that Anna-Jane's body had shown signs of Angioedema and Anaphylaxis. The so-called waterlogged lungs took all the experts off the track. And none of them were in a position to do anything else but accept Dr Manock's fresh water drowning scenario. All relevant tissue samples had been cremated.

   The question must still be asked that if Dr Manock truly believed that Anna-Jane had drowned, then why didn't he run the necessary tests for Epilepsy. This should have been done as a mandatory forensic procedure. Unfortunately, Dr Manock had his own agenda to work to.

3. And the possibility of determining cause of death as Myocarditis was completely ruled out because of breaches (c) and (f). Professor Ansford also had this to say from the witness box:

> "Another possibility is a heart condition known as myocarditis; that is inflammation of the heart muscle... This is an inflammation of the heart which may only be detectable after you have taken multiple microscopic slides from the heart, **but you might not see anything at all with the naked eye**."

4. It is also a little-known fact that more women than men die of heart disease – well over 9,000 each year. Many are outwardly fit and healthy non-smokers with low cholesterol, normal blood pressure, and who exercise regularly. There is simply no known reason for it. And in keeping with the appalling breaches of forensic examination procedures, heart disease was not explored, nor the possibility raised at the Keogh trials.

(h) Full medical records of the deceased were never called for. These records would have revealed 12 different doctors and 37 medical appointments in the five years prior to death. In Dr Manock's words:

> "I didn't see any need to inform myself of the deceased's full medical history... No."

(i) No potassium levels were ever measured.

- When referring to the incompetence of Dr Manock, the High Court of Australia (in another case) is on record as saying:

> "The evidence... revealed an appalling departure from acceptable standards of forensic science in the investigation of this case and in the evidence presented on behalf of the prosecution."

The High Court went on to say:

> "The evidence was not fit to be taken into consideration."

- Dr Manock's incompetence and misleading Findings as South Australia's Chief Forensic Pathologist (1968-1995) have been successfully challenged in no less than thirteen (13) major criminal investigations. He has been found to be absurdly wrong in all thirteen (13) instances which have caused the wrongful incarceration of innocent men, made a mockery of forensic science, and freed guilty parties of any further police investigation, as in the deaths of battered babies, Storm Don Deane (3 months), William (Billy) Barnard (9 months), and Joshua Clive Nottle (9 months).

  In these three battered baby cases they had variously suffered bone fractures, lacerations, and burns. Dr Manock concluded that in all three instances the cause of death had been **bronchopneumonia.**

  The Coroner for South Australia, Mr Wayne Chivell, was given no option but to hold an inquest into these baby deaths and into the continuing incompetence of Dr Manock. This inquest culminated in his scathing 94-page report.

- The Coroner for South Australia, Mr Wayne Chivell, purposely withheld his 94-page report from the second Keogh trial. He released this highly critical report (on Dr Colin Manock's incompetence as a pathologist) just two days after Henry Keogh was convicted on 23 August 1995; a conviction which relied principally on Manock's false testimony. His testimony could have been totally discredited had the jury been aware of the Coroner's report and therefore Manock's gross incompetence as a pathologist.

- Dr Colin Manock **conveniently resigned** as South Australia's Chief Forensic Pathologist in the weeks immediately following the release of the Coroner's 94-page report revealing his incompetence.

- In spite of knowing about Manock's convenient resignation, Defence Counsel, Mr Michael David QC, curiously withheld the Coroner's 94-page report (on Dr Manock's incompetence as a pathologist) from a Court of Criminal Appeal in December 1995. As a result, Henry Keogh's appeal failed.

- Dr Manock concealed the result of his histology examination on the now infamous so-called thumb bruise on the inside of Anna-Jane's left leg. At trial, he told the jury that the mark was a thumb bruise which had occurred when Henry Keogh gripped the deceased's ankle with his right hand, then raising her legs high as he forced her head into the water with his left hand. This was Manock's murder scenario; a scenario which hinged on that mark being a thumb bruise. This is a quote from Mr Paul Rofe QC, prosecutor, taken from the transcript of the trial that convicted Henry Keogh:

  > "The grip mark on the left leg suggests Keogh murdered his fiancée by deliberately drowning her in the bath."

  And in his final 22-minute address to the jury these damning words were uttered in the closing thirty seconds.

  > "If it was a grip, it must have been the grip of the accused. If it was the grip of the accused, it must have been part of the act of murder."

- **In 2004**, before a Medical Board hearing, Dr Manock retracted his entire murder theory; the same theory used to convict Henry Keogh. He admitted that his histology result clearly proved that the mark was not a thumb bruise. In fact, not a bruise at all.

- **In 2007**, before a Medical Board hearing, Dr Ross James, assistant to Dr Manock, admitted that he wilfully misled the jury by failing to disclose the following vital evidence at the Keogh trials; evidence that would have convincingly challenged Dr Manock's false histology result:

  > "... one area that Dr Manock and I differed was the bruise on the inside left ankle... I would not have described what I saw in the sample as a bruise."

  As a result of this highly relevant non-disclosure at trial, Dr James was convicted of professional misconduct; a conviction that was later overturned by his friend, Justice Debelle (now retired), of the Supreme Court of South Australia.

  Note that neither Dr Colin Manock nor Dr Ross James have ever been criminally charged with either perjury or fraud.

- **In 2004**, before the same Medical Board hearing, Dr Manock finally admitted that, contrary to his testimony at trial, sudden unexplained deaths were **not** unusual.

- **In 2004**, again before the same Medical Board hearing, Dr Manock clearly stated that a bath only one third full would contain insufficient water to permit any possibility of a murder scenario of drowning (in whatever form it took.)

- **In 2009**, before the Medical Professional Conduct Tribunal, Dr Manock again admitted to his fabrication of the grip mark (thumb bruise) and his murder scenario of wilful drowning by Henry Keogh. He put this perjury down to the fact that his Findings were simply "erroneous".

- **In 2009**, before the same Medical Professional Conduct Tribunal, Dr Manock admitted that the differential staining of the Aorta was **not** a classical sign of fresh water drowning. He had previously misled the jury by convincing them that "differential staining of the Aorta **was** diagnostic of fresh water drowning."

- **In 2009**, again before the same Medical Professional Conduct Tribunal, Dr Manock admitted that although the brain is not injured, it does not follow that the deceased must have been conscious at the time of death. It was vital to the prosecution at trial to prove that Anna-Jane was still conscious at the time she was purportedly drowned. Of his own admission, his damning assumption at trial was "erroneous".

- Dr Manock was the only pathologist to ever examine the body of the deceased. He misled the committal proceedings, two criminal trials and a subsequent Court of Criminal Appeal. His cause of death was fresh water drowning and he fabricated evidence to prove the manner of drowning (his infamous murder scenario). And for fifteen years he repeatedly stated that the lungs were waterlogged. **In 2009**, then before the Medical Professional Conduct Tribunal he claimed the appearance of the lungs was completely different.

- At the same proceedings **in 2009** Dr Colin Manock went on to make twenty-two (22) new claims regarding his **observations** and his **conduct** during the autopsy; each new claim conflicting with the evidence he presented at the Keogh trials; yet **none** of these twenty-two (22) claims were capable of being substantiated by notations in the Coroner's Running Sheet or by any evidence provided by the witness statements of Amanda Caruana (assistant to Dr Manock at autopsy), Senior Constable Pat Walkley (police liaison officer attached to the Coroner's Office), Detective Zuffi (Coroner's Constable), Dr Kevin Cheney (deceased's father) or Murray Billet (autopsy photographer).

  It can only be concluded that these particular claims were of recent invention – created to defend himself against a professional misconduct conviction – and can have no credibility whatsoever. The Tribunal used the word, "strange"; but Dr Manock still managed to escape a conviction, once again. The Tribunal's own word must surely apply to their decision to acquit – "strange?"

- At the second trial in August 1995, Justice Kevin Duggan allowed:

  1. himself to again accept the appointment as trial judge, having already been contaminated by the first trial – a hung jury;

  2. matters raised at the first trial to be openly discussed in front of a fresh jury;

  3. the prosecutor and defence counsel to fast track the trial after having complemented them both for the manner of their joint handling of evidence. (Also, 47 witnesses were called for the prosecution but only four for the defence);

  4. misleading and non-probative evidence to colour the minds of jury members; and allowed

  5. Dr Colin Manock to hold himself out as an eminent expert witness.

- Despite Dr Manock being appointed by the Institute of Medical and Veterinary Science (IMVS) in December 1968 as South Australia's Chief Forensic Pathologist, the truth is, he has no formal qualifications in either pathology or histopathology. To overcome the embarrassment of needing to appoint someone quickly, the IMVS waived the usual five

years of study required to gain the qualification of pathologist and gave him a 20-minute oral examination, following which he was admitted as a Fellow of the Royal College of Pathologists of Australasia in September 1971. Even this false title did not allow him the right to hold out that he was qualified in histopathology. Dr Ross James, who was fully qualified in this capacity, was brought in as his assistant to cover his lack of competence. Dr James's appointment took place two years after Dr Manock was freshly appointed to the top job.

In Summary

It is widely held that in cases of fresh water drowning deceased persons never show signs of gastric contents clogging the airway or having a swollen face at the time of death, and these were the characteristics identified in the case of Anna-Jane Cheney. You either drown in fresh water or you choke to death on your own vomit, but not both.

It must also be noted that nausea and vomiting are often reactions to antihistamines, the same medication used to combat allergic triggers and help prevent (sometimes too late) the onset of Angioedema, which can precipitate an Anaphylactic attack and its associated vomiting.

And unless Henry Keogh (or anyone else) can explain how he was able to simultaneously drown his fiancée in her bath, and at the same time cause her face, lips, eyes and airway to swell as she gagged on her own vomit – both **causes of death** being incongruous – then Henry Keogh is innocent and **must be acquitted.** And that is without having to take into consideration the damning admissions made by Dr Colin Manock before the Medical Board in 2004 and the Medical Professional Conduct Tribunal in 2009; admissions which retracted vital elements of the testimony he used to mislead committal proceedings in August 1994, two criminal trials (March 1995 and August 1995), and a Court of Criminal Appeal in December 1995.

The Problem to Overcome

The Australian Human Rights Commission has rightly expressed its deep "concerns that the current system of criminal appeals does not provide adequate process for a person who has been wrongfully convicted or who has been the subject of a gross miscarriage of justice to challenge their conviction." Accordingly, it is left to the discretion of the Attorney-General to refer matters back to a Court of Criminal Appeal. But getting Henry Keogh back into a Court of Criminal Appeal has been repeatedly blocked by successive South Australian Attorneys-General.

The HRC considers this conduct to be inconsistent with our obligations under the international human rights treaties, in particular the right to challenge a wrongful conviction in a court; let alone being a fundamental breach of the "rule of law" which has long been incorporated into Australia's domestic law by Australia's High Court.

Now add to this the decision of the High Court which has made it abundantly clear that even **one** relevant non-disclosure at trial is sufficient to set aside a conviction. Yet, when non-disclosures come to light subsequent to a failed appeal there is no mechanism in Australia to allow a second appeal. So on one hand there is overwhelming fresh evidence to set aside Henry Keogh's conviction, but on the other there is no court prepared to hear it. Only the Attorney-General – at his sole discretion – has the power to refer these matters back to a Court of Criminal Appeal. However, in Henry Keogh's case, four Petitions over the years have been dismissed without reason; another prerogative of the Attorney-General.

In short, Australia's criminal appeals system is in breach of our international human rights obligations and flies in the face of a High Court decision which deems a relevant non-disclosure at trial sufficient to set aside a conviction; leaving Henry Keogh at the sole mercy of South Australia's Attorney-General. A problem that could so easily be overcome by inserting a simple clause in the **Criminal Law Consolidation Act which would allow further appeals in light of fresh evidence as and when such evidence is uncovered.**

We now ask that you reread this section, 'Reasons to Set Aside and Acquit', to fully absorb the significance of the non-disclosures, the non-probative and misleading evidence, the perjury, and the procedural irregularities at the Keogh trials; added to which has been the refusal – time and time again over 16 years – to allow Henry Keogh back into a Court of Criminal Appeal. **All of which has contributed to one of the greatest miscarriages of justice ever perpetrated in the history of our nation.**

In conclusion, insufficient pressure has been brought to bear on the government of South Australia or directly on its Attorney-General. That's now changing thanks to the support of dedicated South Australians. Please join them.

Contact Us and together we will free an innocent South Australian. This is a call to all Tweeters and Facebook users, and a call to all Retirees prepared to volunteer up to eight (8) hours a week. Let us explain how you can be of invaluable assistance.