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COVER Richard Lewer, *Never Shall Be Forgotten – A Mother's Story* 2017 (still) (detail) Hand drawn animation
Image courtesy of the artist, Hugo Michell Gallery and Sullivan & Strumpf



justiceNjustice

Corinne Brittain, Rob Cleworth, Blak Douglas,
John A Douglas, Leah Emery, Richard Lewer,
Lezlie Tilley

24 MARCH – 20 MAY 2018

**THE
LOCK
UP**

Justice*N*justice is a continuation of The Lock-Up's commitment to develop projects that explore social and political issues of our time, to work authentically with a diversity of community members, and to use contemporary creative practice and programming to challenge audiences to see and think in new ways.

Project Team

Artists

Corinne Brittain, Rob Cleworth, Blak Douglas, John A Douglas, Leah Emery, Lezlie Tilley and Richard Lewer.

Lawyers

Karen Wells, Ray Watterson and Dr Robert Cavanagh

Curator

Dr Carolyn McKay,
University of Sydney Law School

Creative Producer

Jessi England

Artists responding to themes of crime, whether they be visual artists, musicians or writers, is a well-explored genre. What makes *justiceINjustice* different is the unique process and framework of the project and its resulting trajectories.

The sharing of ideas and conversations, the explorations and deeply personal responses to the cases by both the artists and lawyers, the availability of material and case notes that would not normally be accessible, the introductions made to family members, the ensuing dialogue between the artists and those most affected by what these cases reveal; these experiences have not only shaped the artistic responses of the artists but continue to create ripple effects that grow as the project becomes public.

In many ways this project has been an experiment, a stepping into the unknown for all those involved. The process has required trust and persistence and has been challenging in ways none of us could have imagined.

Many people have contributed over many years to making this project what it is.

Thank you first and foremost to the clients and their family members who have trusted the artists and us with their stories.

Thank you to Karen Wells, Ray Watterson and Robert Cavanagh for coming to us with the idea for this project. Your incredible commitment to your clients and their families, to the importance of public interest advocacy and your tireless commitment to seeking justice, is a gift to our community and to the many lives your work has touched and continues to touch. Thank you for your trust in us and for the personal plunge you have taken in embarking on this project.

Thank you to all the exhibiting artists. Your sensitivity, openness, spirit of inquiry and commitment to the process and to the stories of those whose lives you have explored in your works, has been the essential ingredient in *justiceINjustice*. This project has not only consumed so much of your time but has also weighed heavily on a number of your hearts.

Thanks to Carolyn McKay for your curation of the exhibition and your commitment to supporting the artists through a complex development process, as well as your own personal and professional creative endeavours in the areas of art and criminology.

Sitting alongside the exhibition as part of the project are a number of associated events. Thank you to Rosemarie Milsom and the Newcastle Writers Festival for the ongoing programming partnership between our organisations that will bring *justiceINjustice* into the Festival program. Thank you to musicians Grace Turner and Tonchi McIntosh for your music, your voices and all your work to make the *Songs for Justice* something truly special.

We are delighted that the University of Newcastle Law School and Legal Centre will be partnering with us to present *Art & Law: Putting Justice into Practice Symposium*. Thank you Professor Tania Sourdin (Head of School and Dean), Sher Campbell and Ann Apps. Your support and enthusiasm, your desire to inspire students, colleagues and associates through the project, and your assistance in organising and promoting the Symposium has been invaluable.

Jessi England

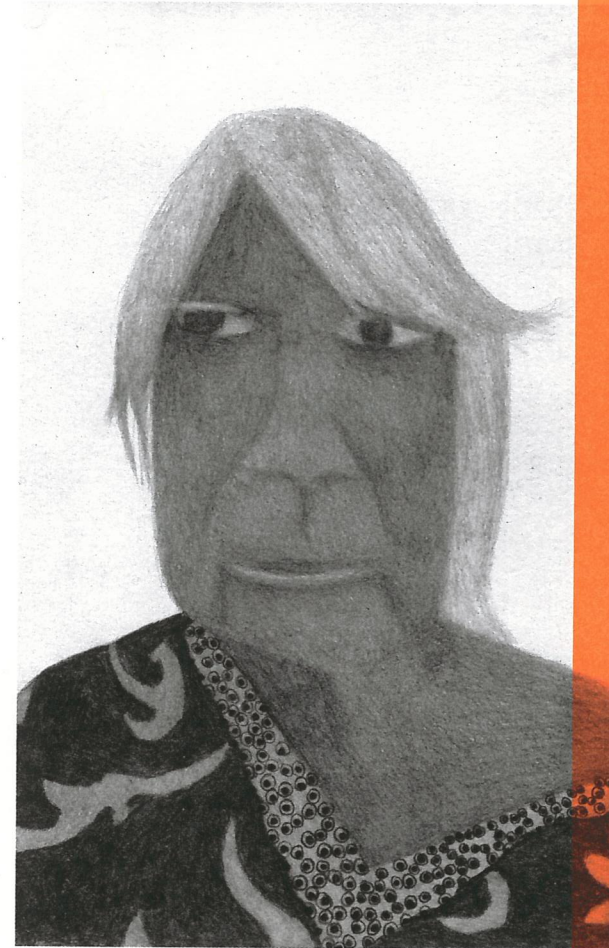
Director, The Lock-Up
Creative Producer, *justiceINjustice*

“Acts of injustice done,
Between the setting and the rising sun
In history lie like bones, each one”

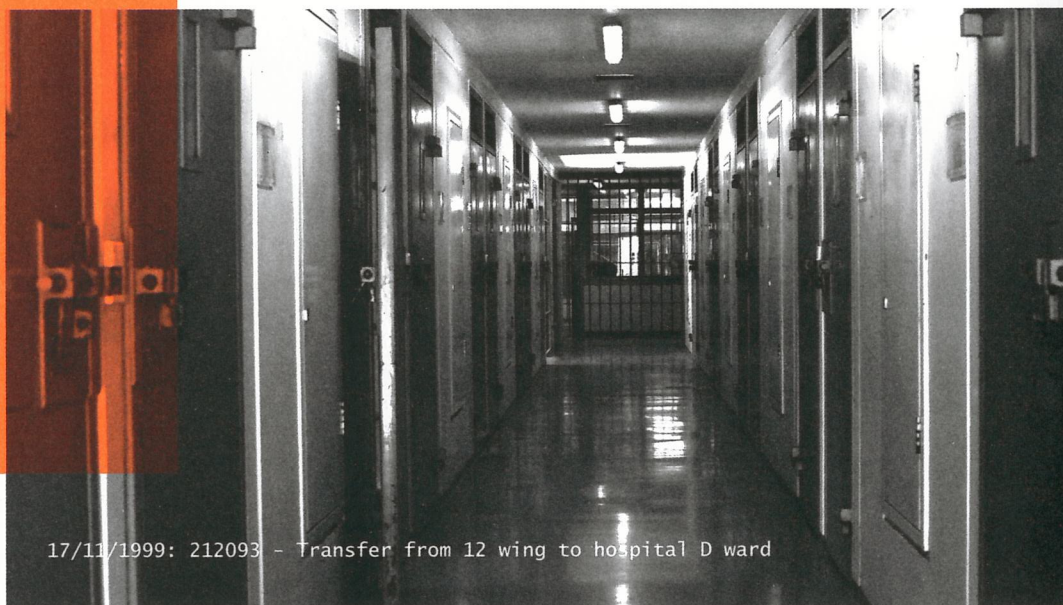
WH Auden and Christopher Isherwood, *The Ascent of F6* (1936)

Through the British colonisation of Australia, we have inherited a criminal justice system – a mechanism of law enforcement agencies, courts and lawyers, and institutions of punishment and detention – that investigates crimes, upholds the laws, maintains social control and imposes penalties on the guilty, pursuant to the rule of law. As citizens we accept this system, an apparatus that can criminalise, punish and deprive people of liberty, provided procedures are just: legitimate, impartial, transparent and reflective of our democratic values. Fairness is central to our conception of justice.

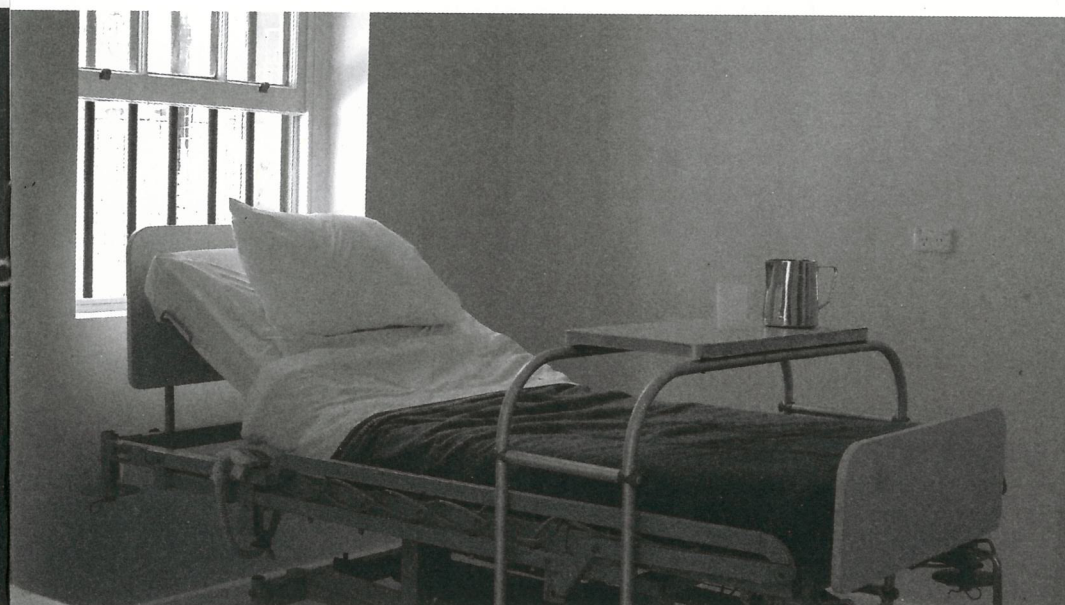
But even a cursory scrutiny of the machinations of justice reveals that acts of injustice are done. Injustice and miscarriages of justice arise when procedures or outcomes seem unfair or unreasonable; police investigations, practices or evidence are flawed; certain populations are targeted; fundamental rights or due process are breached; equal access to justice is denied; and innocent people are wrongfully convicted. There is injustice in how those on the margins of society – the poor, homeless, victims of violence, addicted, disabled or by reason of race, religion or mental health – have an increased risk of coming into contact with the criminal justice system.



Richard Lewer
Never Shall Be Forgotten
– *A Mother's Story* 2017 (still) (detail)
Hand drawn animation
Image courtesy of the artist, Hugo
Michell Gallery and Sullivan & Strumpf



17/11/1999: 212093 - Transfer from 12 wing to hospital D ward



John A Douglas
No System to Fail 2018 (still)
Site specific multi channel synchronised
video installation with sound, text and objects
Image courtesy of the artist

It is in this context that *justiceINjustice* presents a unique collaborative platform for three lawyers and seven artists to examine public interest cases that underline issues of injustice and marginalisation. Through research, discussions, and meetings with impacted families, the lawyers and artists have collaborated to explore high profile cases of wrongful conviction, wrongful detention, excessive use of police force, failures to bring perpetrators to account, and deaths in custody. These present instances where the criminal justice system has, apparently, failed.

For instance, at every level of the criminal justice system is the over-representation of Aboriginal people. Two bodies of work in *justiceINjustice* respond to the deaths in custody of young Aboriginal men: *Richard Lewer's Never Shall be Forgotten - A Mother's Story*, 2017 and John A Douglas' installation *No System to Fail*, 2018. Lewer's hand-drawn animation is an extant work, the only work not created through the collaborative process described above, yet it so clearly spoke to injustice that its inclusion in this exhibition was considered highly desirable. In 1983 in Roebourne, Western Australia, 16-year-old John Pat was gravely injured during a fight

with off-duty police officers and he later died of his injuries in the police lock-up. The following year, the police officers were acquitted of his manslaughter by an all-white jury. With Lewer as narrator and guide, his animation relates the story from the perspective of John Pat's mother, Mavis. John Pat's death, as a juvenile in police custody, was a catalyst for the Royal Commission into Aboriginal Deaths in Custody (1987-91) that investigated the deaths of 99 Aboriginal and Torres Strait Islander people. Arising from the Royal Commission were recommendations targeted at the practices of correctional and law enforcement authorities.



Corinne Brittain
STRANDED (I have done nothing wrong) (detail)
Hand dyed cotton tape, wax, steel grid,
mattress spring
190cm x 320cm x 240cm
Image courtesy of the artist

Tragically for Edward (Eddie) Russell, the system's failures to care for vulnerable people persisted. This partially deaf young Aboriginal man with intellectual impairments was convicted of several offences, transferred from one institution to another, from cell to cell, and ultimately incarcerated in Long Bay Gaol. There he took his own life in 1999, alone in a single cell – a custodial situation that contravened the Royal Commission recommendations. John A Douglas' site-specific installation *No System to Fail* is consciously unforgiving in its execution. It seeks to immerse us in the stark reality of carceral space and asks us to reflect on an uncaring, punitive and futile 'system'. This work has been informed by conversations with the Russell family and, poignantly, has been created at a time when the artist became aware of his own Aboriginal ancestry.

The theme of systemic failure in detention and the dereliction of the duty of care continues with Corinne Brittain's installation. *STRANDED (I have done nothing wrong)* critiques the treatment

of Cornelia Rau during 2004–05. Ms Rau, a permanent Australian resident, was wrongfully detained in a Queensland prison and then at the notorious Baxter Detention Centre in South Australia while suffering from mental health issues. Throughout her wrongful detention, including solitary confinement, it was reported that her recurring mantra was 'I have done nothing wrong'. Corinne Brittain's work of rusted wire mesh and red cotton twill, developed in consultation with the Rau family, reflects on the frustrating 'red tape' and 'buck passing' that characterised this disastrous incident. Brittain's work also invites us to pause and consider our ongoing treatment of those in our immigration detention facilities.

Cracks in the criminal justice system were made apparent in the infamous series of inquests, convictions, appeals and pardons that marked the treatment of Lindy and Michael Chamberlain. They reported that their baby, Azaria, had been taken by a dingo from their campsite at Uluru in 1980, a claim supported by Aboriginal trackers who had found fresh dingo paw prints around

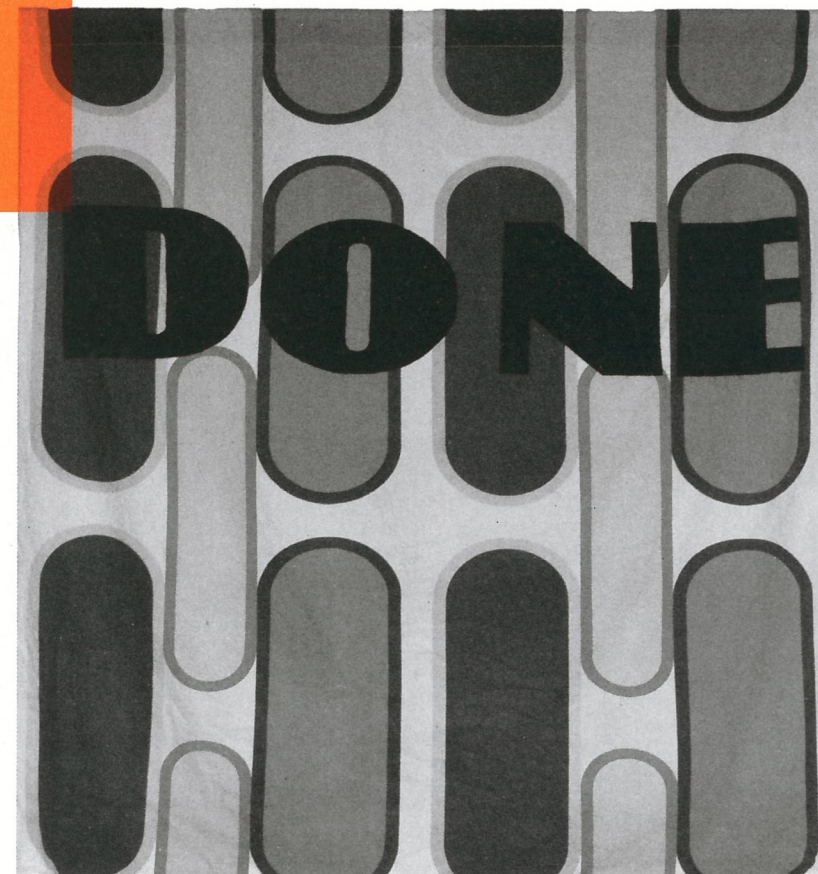
Blak Douglas
A Dog's Breakfast 2018
 Synthetic polymer on canvas (Permaplastik Paints)
 150cm x 200cm
 Image courtesy of the artist



the tent. This narrative was initially accepted in the first inquest but later proceedings placed little credence on the Aboriginal trackers' evidence and the Chamberlains were convicted of murder/accessory after the fact to murder (but eventually exonerated). Blak Douglas' painting *A Dog's Breakfast*, 2018 examines the flawed investigations as well as the non-recognition and marginalisation of Aboriginal knowledge. While informed by discussions with the lawyers involved, the painting is closely aligned with Blak Douglas'

usual art practice that appropriates and re-visions iconic imagery, here: the dingo road sign and 'baby change table' symbol. Behind the image of Uluru are the five Anangu trackers in spirit form, barely noticeable by the white justice system.

Investigative failure is also at the heart of Leah Emery's installation *Vigil*, 2018. This work responds to the disappearance of three young females from the Newcastle area during 1978–79 and the frustrations felt by their family members regarding police inquiries



Leah Emery *Vigil* 2018 (work in progress/detail)
 Installation comprising of vintage curtain, fan and chair;
 velvet, metal stand, perspex, acrylic
 166 x 158 cm
 Image courtesy of the artist

at the time. Twenty years after their disappearance, Strike Force Fenwick was formed to investigate why police had not treated these cases as suspected homicides. Leads and evidence had not been pursued, and a 2001 inquest at Toronto Local Court found that the three had been abducted and killed by people unknown. In the use of a gently blowing curtain,

spotlights, sewn text and vinyl lettering, Leah Emery seeks to place the viewer in the position of the families and their quest to have the perpetrator(s) brought to account. The work highlights text sourced from the Strike Force Fenwick findings, and conjures a metaphor for the properties that were never searched, the suspects who were not questioned, and the beds that

Life. What a word. It can encompass so much. It can represent your being, your actions, your thoughts, situations and consequences of actions. Its everywhere and any thing can be made of it – success, failure, misery, happiness, wealth and poverty.

**Life – the be all and end all of creation.
It's that simple. Well maybe not.**

Lezlie Tilley
Notés from Memories started
8th January 1993 2018
Video installation
Image courtesy of the artist

will never be slept in again. The disappearances remain unsolved with the parents left holding vigil.

Text is also critical to Lezlie Tilley's two 2018 works, *The Kathleen Folbigg Diaries* and *Memories begun 8th January 1993*. These audio and video works respond to the case of Kathleen Folbigg who, in 2003, was convicted of three counts of murder and one count

of manslaughter in relation to the deaths of her four babies. The convictions were secured on the basis of circumstantial and forensic evidence, and selected extracts from Folbigg's personal diaries seemingly sealed her fate. In her works, Lezlie Tilley draws text from these diaries and other writings to present another context: a human perspective of a woman who has

been thoroughly condemned and vilified by society. The overlapping voices in *The Kathleen Folbigg Diaries* obscure a singular truth, while the looped text in *Memories* scrolls down the emotionally charged surface of the leather padded cell. Folbigg is currently incarcerated and has given permission for the artwork to be produced.

Finally, Rob Cleworth's body of work, *Tahara*, 2018 responds to the 1997 death of Roni Levi at the hands of police officers on Bondi Beach. Roni Levi, who was suffering from mental illness at the time, was shot and killed as he emerged from the surf. The two police officers were later investigated by the Police Integrity Commission regarding whether

PUTTING JUSTICE INTO PRACTICE

“Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.”

– Martin Luther King Jr., Letter from the Birmingham Jail

Justice is the thread that runs through the legal system to hold it all together, but it is public interest cases that most sharply bring issues of injustice into focus.

The 2016 exhibition at The Lock-Up, *The Most Gaoled Race on Earth*, by Blak Douglas and Adam Geczy, was a powerful example of artists putting justice into art practice and tackling issues of injustice head on. It had a slap you in the face kind of uncomfortableness about it that echoed long and loud for lawyers. It led us to the question of what would happen if lawyers working on public interest cases connected with artists to share what we know about injustice, in some cases introducing the artists to the families directly affected by injustice. That was the idea that was behind an email that was sent to The Lock-Up's Director Jessi England, about two years ago.

justiceINjustice is the result. It focuses on six particular cases. All of the cases enlivened a sense of outrage in the lawyers who were involved. They made us want to find out what had gone wrong, to expose the injustice, and to try and fix it so it wouldn't happen again. While we could never share our clients' sense of loss and grief, we could share the desire to make things better with them.

Most of the cases explored through *justiceINjustice* were initially undertaken by lawyers and trainee lawyers working at the University of Newcastle Legal Centre (UNLC) during the tenure of Robert Cavanagh, Ray Watterson and John Boersig, up until their departure from UNLC in around 2006. Karen Wells was lucky enough to be a student at the time. The Legal Centre's commitment to public interest advocacy work during this period was recognised both nationally and internationally. Cavanagh and Watterson, along with some former and current students of UNLC continue to work on a range of public interest matters in a pro bono capacity. Boersig continues to work for the benefit of others, most recently through his work as CEO of Legal Aid ACT. The Centre's public interest commitment continues today under its Director, Shaun McCarthy.

Preventing future injustice depends, in large part, on exposing past injustices. Learning lessons from failed justice keeps the cases that form the centerpieces of this exhibition important today.

Imagine this....

Your husband, unwell and in hospital, wandering away only to be shot by police a few short hours later.

Your sister, diagnosed with schizophrenia, is locked up in detention centre in the middle of the desert.

Your daughter has gone missing and either no one's looking or they're looking, but they can't find her.

Your son, far away from home, dies in custody.

You're locked up for killing your babies, and claim you didn't.

These kinds of tragedies devastate individuals and deeply trouble communities. They also carry fundamental lessons about injustice and how things can go wrong for anyone, but most commonly for the ill and powerless.

Some of the cases in this collaborative exhibition may be known to you by name. All have been the subject of legal and public scrutiny. All have had extensive media coverage. Most continue to be referred to many years after their legal resolution.

Each of these cases are deeply troubling cases of individual injustice. Each speaks to deep questions about justice itself: just what is justice, who receives it, and who doesn't? And when justice fails, why does it? And who sees its failures, and who turns a blind eye?

So, why put justice into art practice?

Art speaks a different language to that of the law. We talked with artists about injustices we knew about to see them through artists' eyes. A first and necessary step in the resolution of injustice is its exposure. Or, as Mildred Hayes says in the recently acclaimed film, *Three Billboards Outside Ebbing, Missouri*: "the more you keep a case in the public eye, the better your chances are of getting it solved."

Thanks to The Lock-Up, the collaboration to keep these cases in the public eye and tell their stories about injustice has taken place. Our collaboration about injustice involved shared conversation, coffees and meals, emails and phone calls, as well as providing access to written documents. The lawyers learned about the artists, and maybe the artists even learned about the lawyers.

We found common ground as practitioners: we are the do-ers of our respective worlds, working hard with no guarantees. We all learned about the strength and multiplier effect of positive collaboration.

The process of collaboration required us to share the stories of the cases without the familiar padding of the "value neutral" language of the law. At times it was hard, like reopening wounds not yet properly healed, or that we didn't even know were there.

Our heartfelt thanks to the clients and their families who allowed us to share their stories, and our collaborators, who have given so generously of their time, energy and creativity. Their works expose issues of injustice in powerful and eloquent ways.

**Karen Wells, Ray Watterson
and Dr Robert Cavanagh**
Lawyers, *justiceINjustice*

CASE NOTES

Roni Levi

The fatal police shooting on Bondi Beach in Sydney in June 1997 of French photographer Roni Levi remains one of Australia's most controversial deaths. The shooting was captured on camera by another French photographer (Bratanoff–Firgoff).

The UNLC represented Roni Levi's widow, Melinda Dundas, at the coronial inquiry into Levi's death in February and March 1998 and subsequently in the Police Integrity Commission inquiry into the shooting and its investigation. What was not revealed by police at the time of the inquest was that the two shooters were under investigation by internal affairs in relation to drugs, a matter crucial to the investigation into Roni's death.

The photographs formed part of a special 100 Objects exhibition in the Museum of Sydney (opened 16 June 2010) commemorating 100 years since the opening of Sydney's Mitchell Library and its collection of original records of Australian history. This is the Museum's account of the case:

"On Bondi Beach, 1997, Photographs of Roni Levi's Death, Inconvenient Evidence"

"A split second before his death on Bondi Beach at 7.31 am on 28 June 1997, Roni Levi walks towards Senior Constable Anthony Dilorenzo and Constable Rodney Podesta, both about to shoot, as Senior Constable John Jones aims his revolver from

the left and Senior Constable Grant Seddon lunges forward with a baton. Frenchman Roni Levi was mentally ill individual brandishing a knife, and following the coroner's report, the police involved were cleared of any wrongdoing. Exoneration of the police galvanised Roni Levi's widow.

A review of evidence undertaken by law students exposed the systemically flawed investigation of her husband's death. These photographs proved to be crucial evidence, contradicting claims by and Constable Podesta, and Senior Constable Dilorenzo that they were threatened by Levi 'lunging' at them.

Three Police Integrity Commission hearings over eighteen months sought to determine whether Podesta and Dilorenzo were under the influence of drugs at the time of the shooting. Despite their denials, Podesta resigned in March 1988 and the following year was found guilty of suppling cocaine. His partner Dilorenzo was sacked from the NSW Police Service in June 1999 for failing to explain his involvement with known drug dealers."

Cornelia Rau

Cornelia Rau, was a young, mentally-ill Australian woman who was wrongfully detained as an illegal immigrant in a refugee detention centre under the Australian government's mandatory refugee detention programme. The UNLC acted for the family of Cornelia at the 2005 Palmer Inquiry. Watterson describes the UNLC student contribution as follows:

"Law students spent many hours preparing the Inquiry submissions

in Cornelia's case. Their work involved research on the lawfulness or otherwise of her detention; interviewing detainees at Baxter Detention Centre, members of the clergy that visited Baxter, members of Parliament, refugee advocates, journalists, medical personnel responsible for Cornelia's treatment and government officials. Students also took witness statements and were responsible for gathering and analysing facts, preparing chronologies, considering recommendations for reform and organizing the details of the Inquiry submissions. They were in regular contact with Cornelia's family, incorporating their information and ideas into the preparation of submissions."

Cornelia Rau's case not only questioned how an Australian citizen can be detained in her own country but also shone the spotlight on how Australia treats refugees, an issue that remains of concern for many Australians today.

Missing Children

Leanne Goodall, Robyn Hickie and Amanda Robinson disappeared from the Newcastle area during 1978–1979. Their families reported them missing to police. They hoped they might be given answers about what had happened to their children but that did not happen.

Twenty years later Strike Force Fenwick was formed to investigate what had happened to these and other missing Hunter children. This came about because of campaigning by a group called Yesterday's Children, set up by Hilda

Armstrong, a community advocate and UNLC volunteer, along with the families.

Strike Force Fenwick investigated the original flawed investigations in the cases of Hickie and Robinson, and found that leads and evidence were not followed up. In the case of Goodall, Fenwick found absence of any investigation at all. The opportunity to learn the truth was severely hampered by the passage of time. The 2001 inquest at Toronto Local Court found that the three had been abducted and killed by people unknown.

The disappearances of these three young women remain as unsolved crimes.

The UNLC is currently reviewing the implementation of the original coronial recommendations regarding systems relating to missing persons and adequate resourcing of old unsolved homicides.

Eddie Russell

As an Aboriginal Australian, Eddie Russell was a member of the most gaoled race on earth. He was also a person with disabilities. He died in custody at Long Bay Gaol in 1999, far away from his home and family in Walgett, in spite of recommendations of the Royal Commission into Aboriginal Deaths in Custody made in 1991 that "where possible, an Aboriginal prisoner should be placed in an institution as close as possible to the place of residence of his or her family."

When Eddie was originally sentenced, the judge recommended

that he "be placed in a facility that could adequately deal with his problems." The Court of Criminal Appeals noted the special importance of parental contact for his rehabilitation. His mum and dad, Helen and Ted Russell, along with supporters like Roderic Pitty, campaigned long and hard to have him moved closer to home, but to no avail. The prison system's failure to adequately respond to Eddie's complex needs contributed to his death.

Almost twenty years on, the imprisonment rate of Aboriginal Australians with disabilities remains unacceptably high. The recently introduced National Disability Insurance Scheme (NDIS) has the potential to assist such clients with complex needs to reduce their risk of incarceration but does not do so. Front line lawyers frequently observe that, more often than not, criminal justice clients with complex needs who should receive such services as a basic right fall through the cracks in the NDIS and end up in prison. Often even those who may otherwise be eligible for bail, remain refused bail for want of adequate services in the community. Then the prison system has trouble responding to their needs.

It is a situation that can only result in more shameful tragedies.

Azaria Chamberlain

Nui Minyintiri, Barbara Tjikadu, Nipper Winmarti, Daisy Walkabout and Impana (Kitty) Collins knew what happened to Baby Azaria right from the start.

On 17 August 1980, just before 8pm, Lindy Chamberlain called out "That dog's got my baby" or "My God, my God, a dingo has got my baby."

Hundreds of people searched for Baby Azaria that evening, and through the following days. Local Aboriginal people were highly skilled and experienced trackers. Between them, Nui, Nipper, Barbara, Daisy, and Impana (Kitty), located and tracked dingo prints and drag marks. They looked at the evidence in the red soil of Uluru and pieced together what had happened.

But the Aboriginal trackers and the dingo tracks they pointed to were all but forgotten. Aboriginal knowledge about Azaria's death was shuffled to the fringes. Replaced by "junk" science dished up at the trial that saw Lindy wrongfully jailed for murdering her baby.

History has made it clear that the Aboriginal trackers told the right story, right from the start. The trackers were not properly interviewed at the time and were not heard by the jury that sent Lindy to gaol.

It was not until the fourth inquest, 32 years after that fateful night, that the legal system finally caught up and concluded what the trackers knew on the night, that Azaria was taken by a dingo.

At the Chamberlain trial the prosecuting attorney, scorned the possibility that a dingo took Baby Azaria. He exhorted members of the jury to act as true Australians in deciding whether Lindy or a dingo killed her child. He told the jury:

"... the dingo story is preposterous. It's not capable of belief what we do know as Australians, and you don't need experts to tell you, is that [dingos] are not notorious man-eaters... if your general knowledge tells you that dingos are not known as a species for killing and eating human beings, then you can take all that into account in deciding the likelihood of the truth of the dingo theory."

The all-white police, the all-white prosecutors, the all-white jury, got it all white wrong. All went down the wrong track.

Kathleen Folbigg

Kathleen Folbigg, aged 36, was found guilty of killing Caleb, Patrick, Sarah and Laura, who were aged between 19 days and 19 months. On appeal the length of sentence was reduced to 30 years with a non-parole period of 25 years. In 2011 academic lawyer Dr Emma Cunliffe first raised serious public concerns about the precarious nature of the convictions of Kathleen Folbigg's in her book, *Murder, Medicine and Motherhood*.

On 11 June 2015, the University of Newcastle Legal Centre lodged a petition with the NSW Governor calling for a judicial review of Ms Folbigg's convictions in the light of

new evidence relating to the cause of death of her children and the use made at the trial of evidence from her diary. The petition maintains that the convictions were unsafe, in the light of new evidence gathered since the trial.

The submissions claim that Ms Folbigg's convictions were unreasonable and a miscarriage of justice occurred because the jury was given incorrect medical evidence, incorrect evidence about the incidence of four children's deaths in one family, and a default diagnosis of murder when there was no medical evidence to say they had been killed.

John Pat

The show includes one existing work by Melbourne artist Richard Lewer that focuses on the death of John Pat, a 16 year old Aboriginal boy who was killed in a fight with police in the Pilbara region of Western Australia. The police were acquitted. John's death became a symbol of injustice and oppression for Aboriginal people.

Case notes by Karen Wells, Ray Watterson and Dr Robert Cavanagh, 2018